

KENNETH J. LUCIANIN
THOMAS TUCCI, JR.
Commissioners



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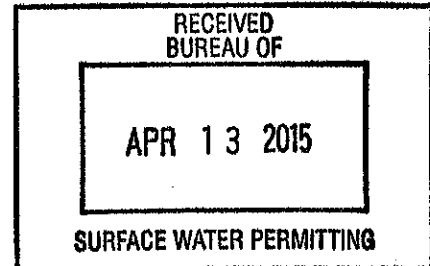
MICHAEL DeFRANCISCI
Executive Director

GREGORY A. TRAMONTOZZI
General Counsel and Acting Clerk

April 13, 2013

VIA COURIER

Office of Legal Affairs
Attn: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402



Re: Stay Request and Appeal of NJPDES Permit No. NJ0021016

Dear Sir or Madam:

The Passaic Valley Sewerage Commissioners ("PVSC") requests an adjudicatory hearing regarding several issues raised in NJPDES Permit No. NJ0021016, recently issued to PVSC by the New Jersey Department of Environmental Protection ("NJDEP"), and as further delineated herein. PVSC also requests a stay of all provisions where a stay request is noted below.

In support of these requests, please find the enclosed Adjudicatory Hearing Request Checklist and Tracking Form and Stay Request and Tracking Form. Also attached to those forms are: (1) Statement in Support of Request for an Adjudicatory Hearing (Attachment A); (2) Statement in Support of Stay Request (Attachment B); and (3) a copy of NJPDES Permit No. NJ0021016 (Attachment C).

Please note that PVSC, as well as seven other CSO permittees within PVSC's Treatment District, have requested an extension of time from NJDEP within which to file these requests. As of the execution of these requests, NJDEP has not yet responded to that request. PVSC reserves the right to supplement and/or amend any part or the entirety of these requests up to and including the date on which such requests are to be filed in accordance either with regulation or with any extension granted by NJDEP.

We appreciate NJDEP's attention to this matter and look forward to working cooperatively to resolve the issues identified.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bridget M. McKenna', with a long horizontal stroke extending to the right.

Bridget M. McKenna,
Chief Operating Officer
Passaic Valley Sewerage Commissioners

Attachments (as stated)

c: Pilar Patterson, Bureau Chief, Surface Water Permitting, DWQ, NJDEP

***ADJUDICATORY HEARING REQUEST CHECKLIST AND TRACKING FORM
FOR INDIVIDUAL NJPDES PERMITS***

I. Permit Being Appealed:

Facility Name: Passaic Valley Sewerage Commissioners

NJEMS Masterfile # (if available): 8439

NJEMS PI # (if available): 46756

Issuance Date of Final Permit Decision: 03/12/15

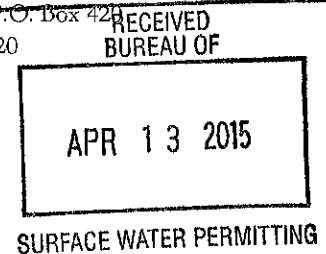
NJPDES Permit #: NJ0021016

Permitting Bureau (checkone):

☐ Chief
Mail Code 401-02B
Bureau of Nonpoint Pollution Control
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, NJ 08625-0420

☐ James Murphy, Acting Chief
Mail Code 401-02B
Bureau of Pretreatment and Residuals
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, NJ 08625-0420

☒ Pilar Patterson, Chief
Mail Code 401-02B
Bureau of Surface Water Permitting
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, NJ 08625-0420



Permit Writer: _____

II. Person Requesting Hearing:

PASSAIC VALLEY SEWERAGE COMMISSIONERS

Name/Organization

Bridget McKenna, Chief Operating Officer

600 Wilson Avenue

Newark, New Jersey 07105

Address

973-817-5976

Telephone Number

Michael D. Witt, Esq.

Name of Attorney (if applicable)

CHASAN LEYNER & LAMPARELLO, PC

300 Harmon Meadow Blvd

Secaucus, New Jersey 07094

Address of Attorney

201-348-6000

Telephone Number of Attorney

III. Status of Person Requesting Hearing (Check One):

☒ Permittee under the permit number identified above.
Complete A. and C. through I. of Section IV. below.

☐ Person seeking consideration as a party to the action.
Complete B. through I. of Section IV. below.

IV. Include the following information as part of your request:

A. If you are a permittee under the permit number identified above:

1. For the Office of Legal Affairs only, a copy of the permit clearly indicating the permit number and issuance date;
2. A list of the specific contested permit condition(s) and the legal or factual question(s) at issue for each condition, including the basis of any objection;
3. The relevance of the legal and/or factual issues to the permit decision;

* For NJPDES permits, the procedures for requesting an adjudicatory hearing on a final permit decision and for the Department's evaluation and processing of such requests are set forth in N.J.A.C. 7:14A-17.

4. Suggested revised or alternative permit conditions and how they meet the requirements of the State or Federal Act; and
 5. Information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).
- B. If you are a person seeking consideration as a party to the action:
1. A statement setting forth each legal or factual question alleged to be at issue;
 2. A statement setting forth the relevance of the legal or factual issue to the permit decision, together with a designation of the specific factual areas to be adjudicated;
 3. A clear and concise factual statement of the nature and scope of your interest which meets the criteria set forth at N.J.A.C. 7:14A-17.3(c)4;
 4. A statement that, upon motion by any party granted by the administrative law judge, or upon order of the administrative law judge's initiative, you shall make yourself, all persons you represent, and all of your officers, directors, employees, consultants, and agents available to appear and testify at the administrative hearing, if granted;
 5. Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions, including permit denials, which, in your judgment, would be required to implement the purposes of the State Act;
 6. Identification of the basis for any objection to the application of control or treatment technologies, if identified in the basis or fact sheets, and the alternative technologies or combination of technologies which, in your judgment, are necessary to satisfy the requirements of the State Act;
- C. The date you received notification of the final permit decision;
- D. The names and addresses of all persons whom you represent;
- E. A statement as to whether you raised each legal and factual issue during the public comment period in accordance with N.J.A.C. 7:14A-15.13;
- F. An estimate of the amount of time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachments, to:
1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402, Trenton, New Jersey 08625-0402
 2. The permitting bureau at the address identified in Section I above.
 3. Any other person named on the permit (if you are a permittee under that permit).
 4. The permittee(s) (if you are a person seeking consideration as a party to the action). You must submit evidence that a copy of the request has been delivered to the applicant for which the permit is the subject of your hearing request (e.g. certified mail receipt).

V.

Signature: _____

Date: 04/15/2015

*For NJPDES permits, the procedures for requesting an adjudicatory hearing on a final permit decision and for the Department's evaluation and processing of such requests are set forth in N.J.A.C. 7:14A-17.

STAY REQUEST AND TRACKING FORM *

I. Permit Containing Condition(s) to Be Stayed:

Facility Name: Passaic Valley Sewerage Commissioners

NJEMS Masterfile # (if available): 8439

NJEMS PI # (if available): 46756

Issuance Date of Final Permit Decision: 03/12/15

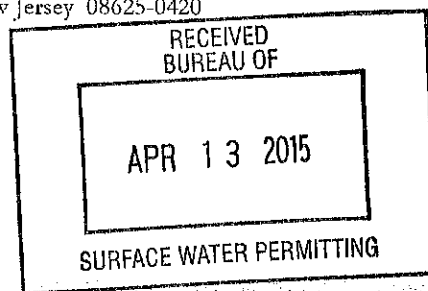
NJPDES Permit #: NJ0021016

Permitting Bureau (check one):

☐ Chief
Mail Code 401-02B
Bureau of Nonpoint Pollution Control
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, New Jersey 08625-0420

☒ Pilar Patterson, Chief
Mail Code 401-02B
Bureau of Surface Water Permitting
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, New Jersey 08625-0420

☐ James Murphy, Acting Chief
Mail Code 401-02B
Bureau of Pretreatment and Residuals
Department of Environmental Protection
401 East State Street, P.O. Box 420
Trenton, New Jersey 08625-0420



Permit Writer: _____

II. Person Requesting the Stay(s):

Passaic Valley Sewerage Commissioners

Name/Organization

Bridget McKenna, Chief Operating Officer

600 Wilson Avenue

Newark, New Jersey 07105

Address

973-817-5976

Telephone Number

Michael D. Witt, Esq.

Name of Attorney (if applicable)

Chasan Leyner & Lamparello, PC

300 Harmon Meadow Blvd

Secaucus, New Jersey 07094

Address of Attorney

201-348-6000

Telephone Number of Attorney

N.J.A.C. 7:14A-17.6 provides for stays of contested permit conditions. In order for the Department to consider a request for stay, the person making the request must submit a written request to the Department by certified mail or other means which provides verification of the date of delivery. In the request for a stay of each permit condition, a written evaluation must be submitted which addresses each of the factors at N.J.A.C. 7:14A-17.6(c). Briefly stated, these factors include: 1) the permittee's ability to comply with the permit condition using existing treatment facilities, 2) the permittee's ability to comply with the permit condition by implementing low cost short-term modifications to the existing treatment facility, 3) the level of pollutant control actually achieved using short term modifications, 4) the cost to comply with the condition and 5) the environmental impacts granting a stay will have on the receiving waterbody.

This completed stay request form, along with the evaluations mentioned above, shall be submitted to 1) the permitting bureau at the address identified in Section I above and 2) Office of Legal Affairs Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402. A person seeking consideration as party to the action who has requested an adjudicatory hearing in accordance with N.J.A.C. 7:14A-17.2 may also request a stay provided notice of the request is also provided to the permittee(s). Such a stay request shall provide the demonstration as required in N.J.A.C. 7:14A-17.6(f).

III. Signature

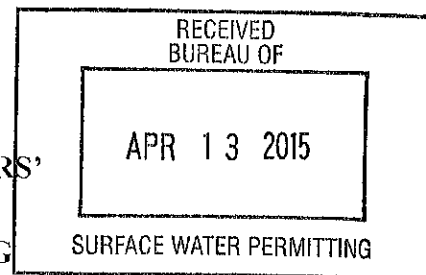
Signature: _____

Date: 04/13/2015

* For NJPDES permits, the procedures for requesting a stay of a final permit condition and for the Department's evaluation and processing of such requests are set forth in N.J.A.C. 7:14A-17.

ATTACHMENT A

PASSAIC VALLEY SEWERAGE COMMISSIONERS'
STATEMENT IN SUPPORT OF
REQUEST FOR AN ADJUDICATORY HEARING



The Passaic Valley Sewerage Commissioners ("PVSC") has identified a number of issues to be addressed with regard to NJPDES Permit Number NJ0021016, dated March 12, 2015 (the "Permit"). These issues range from what appear to be substantive clerical issues (e.g., requiring that PVSC meet "all" three presumptive criteria rather than any one of the three as provided in applicable rules) to legal issues, such as the extent to which PVSC may be held responsible for combined sewer overflow ("CSO") discharges and long-term control plan development and implementation as well as the failure to specify small system requirements for several satellite systems. While the Permit does note in several instances that certain legal requirements are not applicable to PVSC, PVSC believes that the permit misses other instances of inapplicability that should be noted. It is essential that these issues be corrected in any final permit. PVSC looks forward to meeting with the New Jersey Department of Environmental Protection ("NJDEP") to provide any necessary clarifications so that a corrected Permit may be reissued.

PVSC makes the following supplement statements in support of its request for an adjudicatory hearing to contest certain provisions of the Permit and to stay most of these provisions.

I. LIST OF CONTESTED PERMIT CONDITIONS AND BASES FOR OBJECTIONS AND STAY

A. General Objections Affecting Multiple Permit Conditions

1. Liability for Actions of Other Municipalities / Joint and Several Liability for Actions Outside of PVSC's Control

As written, the Permit would hold PVSC liable in instances where other permittees do not meet their respective permit obligations. This is legally inappropriate. PVSC's legal obligations under the NJPDES permit must be clearly delineated and protect PVSC in the event other permittees should fail to timely and/or adequately perform their responsibilities. That said, and as PVSC has stated to NJDEP on numerous occasions, PVSC is willing to support the satellite systems in their efforts to implement their respective permit requirements, but it will do so only under a voluntary agreement with those localities. PVSC cannot assume permit responsibility for tasks which are not legally PVSC's and over which it has little or no real control (requiring full cooperation of the affected localities).

NJDEP's permitting decisions acknowledge the need to address the critical legal issue of delineation of responsibilities but does so by having PVSC and the satellite systems allocate responsibility among themselves and report on such allocation in the quarterly reports to be submitted to NJDEP. PVSC contends that this approach is deficient for several reasons. First, unless each permittee clearly understands what its individual permit requires it is difficult, if not

impossible, to provide meaningful comment and/or determine whether an appeal is necessary. Second, the approach of specifying an allocation of responsibility in the quarterly reports will fail in the absence of total agreement amongst PVSC and its member municipalities. Thus, one recalcitrant party could cause the other eight parties to fail their permits through no action or inaction of their own. The Permit does not address this possibility at all. Third, this permitting structure leaves uncertainty as individual permittee responsibilities. The Permit must assign clear responsibility among the connected parties if there is to be a chance of identifying the most affordable and cost-effective CSO long term control plan for the region.

As NJDEP acknowledges, PVSC does not own any CSO outfalls. Furthermore, PVSC does not own or operate the collection system of contributing communities. Except for very limited circumstances involving immediate risks to human health, safety, or the operation of PVSC's treatment works, PVSC does not possess authority to order or direct member communities to undertake activities within their collection systems. Nonetheless, the Permit would impose numerous requirements on PVSC for the timely development and submission of documents for these areas and an obligation to enforce the implementation of sewer system corrective measures in these areas. PVSC challenges all Permit provisions that impose requirements that it has no authority to ensure will occur or be submitted in a timely fashion as required by the Permit. The Permit must clearly identify PVSC's legal obligations.

Accordingly, PVSC contests the permit conditions cited below.

- Part IV, Combined Sewer Management, § D.1.c¹

The above Permit condition requires the permittee to work cooperatively with all other appropriate municipalities/permittees in the hydraulically connected sewer system to ensure that the Nine Minimum Controls ("NMC") and Long Term Control Plan ("LTCP") activities are being developed and implemented consistently. Although NJDEP acknowledged in its response to comments that a party is only required to address the component of the system it controls in its submittal, the permitting language does not reflect that position. PVSC should not be required to implement NMCs consistent with those undertaken by others. NMC programs in particular will vary widely among communities yet each may satisfy the requirements of EPA's Combined Sewer Overflow Policy, 59 Fed. Reg. 18688 (Apr. 19, 1994) (the "CSO Policy"). For example, there is nothing in the CSO Policy that requires identical street sweeping frequencies among CSO communities. Thus, the requirement of consistency among NMCs/LTCP activities must be deleted in lieu of specific requirements for each community to implement the applicable NMCs in accordance with the CSO Policy.

The same is true for the LTCP development. The permit must identify a workable sequence for each permittee to provide its input so that a collective LTCP can be developed. Rather than providing for such sequencing, the Permit specifies one end date for each party's submittal. If each permittee submitted its individual part on the last day (legally in compliance

¹ Throughout this Section I, the specific Permit conditions that are objected to are identified in bullet points at or near the end of each subsection.

with the Permit as drafted), there would be no time for coordination with the other permittees.² This structural/timing issue must be resolved in a revised Permit. In addition, requiring implementation activities to be consistent is problematic should PVSC find the actions of other municipalities to be inadequate.

This Permit condition also provides that the permittee shall identify its joint and separate responsibilities with all other appropriate municipalities/permittees in the hydraulically connected sewer system regarding implementation of the NMCs and LTCPs. While the permit attempts to delineate permittee responsibilities in certain sections, it has missed doing so in several others. Also, while on one hand seeking to limit permittees' obligations to the infrastructure they own and operate (although not full accomplishing this), the permit on the other hand requires consolidated deliverables from the permittees. The Permit must specify the individual permittees' responsibilities so they have constitutionally-required notice of the same and due process to challenge those specific responsibilities if they disagree with any obligation imposed on them.

The following additional Permit conditions require clarification for the same reasons:

- Part IV, Combined Sewer Management, § F.1.h.ii
- Part IV, Combined Sewer Management, § F.1.j.xii
- Part IV, Combined Sewer Management, § F.7.c
- Part IV, Combined Sewer Management, § G

2. Schedule of Compliance Revision

The compliance schedule and approach for the LTCP development fails to account for NJDEP input and timely action on submittals that will be necessary for the development of such an extensive LTCP. It is not possible for PVSC to know in advance what is acceptable to NJDEP, and establishing such a requirement without allowing sufficient time for NJDEP's review and input basically ensures that the applicable Permit schedules will not be met, especially as numerous permittees from the CSO communities will be seeking the same assistance from limited NJDEP staff resources at the same time. All deadlines that require NJDEP approval of work plans, sensitive area designation, model approval and data analyses should have provisions extending the time to submit approvable documents based on the time frame needed to obtain interim NJDEP feedback and interim document approvals of the selected components of the final LTCP document. The schedules should be triggered by NJDEP action, and PVSC should automatically be provided extensions if NJDEP does not act within thirty (30) days of a submission – as NJDEP has provided for elsewhere in the Permit. See, e.g., Part IV,

² While the various locality collection systems are not listed as co-permittees on the Permit, many of the obligations in the Permit are attributable to them—making them co-permittees in practical effect.

Sanitary Wastewater, § D.2.b (compliance schedule obligation triggered by receipt of NJDEP's written comments on the submitted plan).

Further, scheduled requirements for PVSC should not be based upon acts of other municipalities scheduled for the same time period. The satellite systems should have deadlines for their submittals that feed into the development of a single LTCP by the final deadline. The various permits for the municipalities, however, provide for everyone's individual submittal to be due on the same day that the integrated plan is due. That approach to LTCP development will lead to a failure because one or more of the communities could undermine the group's ability to meet the LTCP development deadline if they wait to share their individual piece of the capacity planning puzzle until the due date.

In addition, Part IV, Combined Sewer Management, § G.1.d.iii contains a requirement associated with monitoring data collected in accordance with NJDEP's QA/QC program. Applicable schedules of compliance must allow for the timeframe needed for NJDEP to review and approve such QA/QC programs and therefore, amendments to the LTCP schedule must be included to reflect that LTCP deadlines are only triggered following NJDEP's approval of such submittals.

For these reasons, PVSC contests the following conditions, and the compliance schedule provisions in the permit. Also, in the event that the compliance schedule does not provide additional time to accommodate the QA/QC process, then the QA/QC permit requirement should be deleted:

- Part IV, Combined Sewer Management, § D.3.b
- Part IV, Combined Sewer Management, § G.1.d.iii

3. Permit Requirements Are More Restrictive Than Applicable Standards

PVSC appeals all Permit requirements that are more restrictive than the adopted regulations and/or statutory requirements associated with NJPDES permitting and CSO compliance. Comments of the various parties identified numerous examples where this has occurred and which need to be corrected (e.g., I/I requirements, technology reduction mandate, mandating compliance with all three of the Presumptive options rather than only one; no provision for small system flexibility for the small CSO collection systems). Moreover, even where NJDEP conceded in its response to comments document that a permit requirement was not drafted consistent with the applicable rules and statutes, no appropriate modification of the permit language ensued. All Permit provisions that contain these flaws need to be withdrawn and redrafted. Many of these flawed provisions are specifically cited throughout this document, including, for example:

- Part IV, Combined Sewer Management, § F.1.h.ii³

³ See Section I.A.13, infra.

- Part IV, Combined Sewer Management, § G.4.f⁴

4. Blending is Not a Bypass

PVSC requested that the Permit specifically recognize that blending is allowed and not subject to the federal bypass prohibition. NJDEP's response to comments reflects NJDEP's denial of such request and its interpretation that the Permit bypass provision would preclude blending. PVSC is aware that NJDEP has authorized blending designs in the past and does not consider operating the plant in this fashion to constitute a bypass. NJDEP's response to comments states that blending of peak wet weather flows as requested by PVSC and others must be classified as a bypass based on directives from the United States Environmental Protection Agency ("USEPA"). PVSC objects to this regulatory interpretation imposed by NJDEP via this Permit. Blending has been determined to not constitute a bypass under federal law (which is incorporated by reference in Part I.A.b. of the Permit). Because blending is not a bypass, regulatory requirements relating to "bypass" are inapplicable. Based on the decision in Iowa League of Cities v. EPA, 711 F. 3d 844 (8th Cir. 2013), and NJDEP's historical approval of peak flow blending as an allowable plant design, the Permit should specify that blending is not a bypass.

The Permit also should clarify the CSO-related bypass option. NJDEP has indicated that in order to allow a CSO-related bypass (i.e., one that does not meet final effluent limits under wet weather conditions), a waiver from existing state design regulations must be approved. NJDEP, however, expressly adopted the federal CSO Policy which allows approval of CSO-related bypasses. That specific application of the CSO Policy controls the more general requirements of the design regulations. Accordingly, the Permit should clarify that no waiver of the design regulations will be necessary for NJDEP to approve a CSO-related bypass as part of the regional Long Term Control Plan. This is an important issue; otherwise, a variance proceeding and demonstration will have to be addressed in the LTCP.

The Permit precludes the discharge from DSN 002 from being granted a CSO-related bypass, despite the availability of such measures under applicable law. In addition, the Permit would require PVSC to ensure that flows receive treatment to the greatest extent practicable utilizing existing tankage for storage while still meeting all permit limits even if another approach, such as blending, is reasonably available. Both of these provisions negatively impact PVSC's ability to increase flow to its treatment plant during wet weather events.

The provisions regarding CSO bypass are improperly stated and the Permit improperly requires a waiver of state design regulations to allow a CSO bypass.⁵ A CSO bypass is independently authorized by NJDEP's adoption of the CSO policy into state law. That adoption did not restrict its application to obtaining a variance from NJDEP's design regulations applicable to other treatment works. Moreover, the assertion that any blending operation must also be classified as a CSO-related bypass and subject to a no feasible alternatives analysis is incorrect for the reasons expressed in the comments submitted to NJDEP by PVSC and other

⁴ See Sections I.B.31 & I.B.33, *infra*.

⁵ See response to comments D-95-100 and D-102-105.

permittees. The Permit as written violates Section 402(q) of the CWA, 33 U.S.C. § 1342(q), and N.J.A.C. § 7:14A-11.12 – both of which mandate that the Permit conform to the federal CSO Policy.

Accordingly, the following permit conditions must be amended to allow PVSC to evaluate and, if included as part of the approved LTCP, implement blending and a CSO-related bypass as discussed above:

- Part II, Table III-A-2, Location Description.⁶
- Part IV, Sanitary Wastewater § E.1.g
- Part IV, Combined Sewer Management, § G.4.e.⁷
- Part IV, Combined Sewer Management, § G.7

5. Provisions Requiring Compliance Generally with Water Quality Standards and Water Quality Planning Regulation

A requirement to comply with water quality standards and Water Quality Planning Regulations denies PVSC and the other permittees critical constitutional rights. Specifically, PVSC and the other permittees have the right to fair notice of what levels of particular pollutants they can discharge. Beyond that, they have the constitutional right to due process. In this context, due process is the NPDES permitting process whereby NJDEP performs a reasonable potential analysis to identify any pollutants that have a reasonable potential to exceed applicable water quality standards. NJDEP then must develop permit limits and propose them in a draft permit. PVSC then has the right to comment on the derivation and expression of such limits and challenge those limits in court, if necessary. PVSC is also entitled to a compliance schedule toward meeting any limits which it cannot immediately meet. A general requirement to meet water quality standards – as proposed in the Permit – impermissibly denies PVSC these constitutional safeguards and must be removed. Further, requiring general compliance with water quality standards is irreconcilably inconsistent with the federal NPDES permit shield.

Finally, as to the CSO aspects of the permit, the CSO Policy does not require immediate compliance with water quality standards. Instead, both federal and state law expressly call for a planning and implementation process, with long-term compliance schedules before water quality-related requirements are applicable. Both CWA Section 402(q), 33 U.S.C. § 1342(q), and N.J.A.C. § 7:14A-11.12(h) mandate that a permit must be consistent with the CSO Policy. In addition, the reasons set forth pertaining to the color permit condition as set forth in comment Section I.B.8, *infra*, apply here. For these reasons, any general requirement for PVSC and/or the localities to comply generally with water quality standards (including any color standard) is

⁶ Limiting DSN 002A to “discharge fully treated effluent”

⁷ PVSC evaluation of alternatives allows consideration of a CSO-related bypass but improperly excludes blending.

inconsistent with both federal and state law and, accordingly, must be removed from Part II. § A.1.a of the Permit.

- Part II. § A.1.a

6. Application of Interstate Environmental Commission (IEC) Requirements

The Permit, as written, requires PVSC to comply with the IEC Water Quality Regulations. For the same reasons mentioned in Section I.A.5, above, this requirement must be removed from the Permit. NJDEP's response to comments document notes that immediate compliance with water quality standards is not intended, but it failed to appropriately limit the application of this provision in the Permit. This necessitates revisions to the following conditions:

- Part IV, Sanitary Wastewater, § E.2
- Part IV, Combined Sewer Management, § E.2

7. Technology-Based Requirements Beyond the Nine Minimum Controls

PVSC appeals the Permit to the extent it requires that additional technology-based controls must be developed and applied pursuant to the LTCP. Technology-based controls are clearly defined in the CSO Policy as being limited to the Nine Minimum Controls. The State has not, to PVSC's knowledge, promulgated any additional technology-based requirements applicable to CSO programs.

Accordingly, any Permit provisions, including the condition cited below, which suggest that PVSC must identify and/or implement additional technology-based CSO controls are legally incorrect and must be deleted from the permit.

- Part IV, Combined Sewer Management § F.1.e.ii
- Part IV, Combined Sewer Management § F.1.f
- Part IV, Combined Sewer Management § F.1.g
- Part IV, Combined Sewer Management § F.1.h.ii
- Part IV, Combined Sewer Management § F.1.j
- Part IV, Combined Sewer Management, § F.2.b
- Part IV, Combined Sewer Management § F.5
- Part IV, Combined Sewer Management § F.7.c

8. Requirement to Implement Nine Minimum Controls for Outfalls Not Owned or Operated by PVSC

The Permit memorializes that PVSC neither owns nor operates the CSO outfalls. Accordingly, PVSC is only subject to the NMCs which apply to its operation of the POTW and the limited interceptors it may own. Sections F.1 through F.9 of Part IV must be revised consistent with this limited responsibility which PVSC has for implementing the NMCs. For example, PVSC has no responsibility for collection system O&M, street sweeping, CSO characterization, identification of sensitive areas in the communities' CSO receiving waters, preventing dry weather overflows in the communities' CSO outfalls, etc.

- Part IV, Combined Sewer Management, § F.1-.9

9. LTCP Requirements Applicable to Infrastructure Which PVSC Does Not Own or Operate

PVSC should not be subject to any form of joint and several liability for the development, adoption, and implementation of an LTCP as it neither owns nor operates any CSO outfalls or the municipal collection systems; therefore, it has no authority or responsibility for such infrastructure. While PVSC will attempt to coordinate LTCP development with the other permittees, it cannot be legally responsible for developing and/or implementing an LTCP when it does not own any CSO outfalls or the localities' collection systems.

The Permit must clearly specify the legal demarcation lines between PVSC and the satellite CSO systems. The Permit must be revised so that it does not require a complete LTCP from PVSC given that PVSC does not own or operate the CSO outfalls and locality collection systems. Such a mandate on PVSC is beyond NJDEP's authority, and the following conditions must be changed accordingly:

- Part IV, Combined Sewer Management, § D.3
- Part IV, Combined Sewer Management, § G

10. Sensitive Area Analysis Requirements Not Applicable to PVSC

PVSC does not own or operate any CSO outfalls. Accordingly, it cannot be required to undertake any analysis or other evaluation of sensitive areas. These erroneous requirements are found in the following sections, which must be deleted:

- Part IV, Combined Sewer Management, § D.3.b.iv
- Part IV, Combined Sewer Management, § G.1.d.ii
- Part IV, Combined Sewer Management, § G.1.d.v

- Part IV, Combined Sewer Management, § G.3
- Part IV, Combined Sewer Management, § G.4.b

11. Requirements Applying to the Collections System Owned or Operated by Other Permittees

A number of Permit conditions specify that they only apply to that part of the collection system owned/operated by each individual permittee. PVSC appeals the NJPDES Permit to the extent that it purports to hold PVSC liable for actions/inactions associated with parts of the collection system that are not owned or operated by PVSC.

For example, the provisions of Part IV, Combined Sewer Management, § G.10 fail to adequately limit PVSC's responsibility to those parameters and studies that are within its control and, therefore, the Permit provision is legally overbroad and inappropriate for PVSC. The LTCP provision, like all other provisions, must expressly state that PVSC is only required to submit information regarding the activities that are within its legal responsibility (i.e., for infrastructure which it owns/operates). While it is both necessary and appropriate for the Permit to limit PVSC's legal liability, PVSC intends to coordinate with the other entities that own/operate CSOs for this system. However, it is imperative that the Permit accurately specify each permittee's responsibilities in case one or more permittees fails to fulfill its responsibilities. In such a case, only the non-performing permittee would be in non-compliance.

In addition, Part IV, Specific Requirements: Narrative, Notes and Definition, § A.1.a states that the CSO section applies "only to the combined sewer system and related discharges," and yet the Permit goes on to impose requirements on the entire collection system (CSO and non-CSO). The Permit must clarify that CSO-related requirements are only being imposed on the CSO collection systems and not the non-CSO (sanitary-only) collection systems. Further, PVSC objects to the extent this provision purports to impose any obligation on PVSC over either the CSO or non-CSO collection system operations or the responsibility for CSO planning or compliance. Finally, the term "related discharges" is vague and fails to apprise PVSC of what is required by the Permit. This provision must be modified to expressly note that any requirement relating to infrastructure not owned or operated by PVSC is not PVSC's responsibility with respect to any Permit requirements. The following conditions must be revised:

- Part IV, Specific Requirements: Narrative, Notes and Definition, § A.1.a
- Part IV, Combined Sewer Management, § F.1.j.⁸
- Part IV, Combined Sewer Management, § G.1.b.⁹

⁸ Applying SOPs and documentation to the "entire collection system that conveys flows to the treatment works."

⁹Applying characterization requirement to "entire collection system that conveys flows to the treatment works."

- Part IV, Combined Sewer Management, § G.10

12. Flow Limit Is Arbitrary and Unnecessary

Flow should not be regulated particularly in light of the requirement for PVSC, as well as the other permittees, to maximize flow to the POTW. Also, the flow limits provide no environmental protection. Flow is not a pollutant. Instead, the concentration and mass limits specified in the Permit protect water quality. Thus, the flow limit is unnecessary.

While PVSC presently discharges below the stated flow limit of 330 million gallons as an annual average, PVSC will want to study alternatives for treating additional wet weather flows, particularly with the other municipal entities also potentially desiring to maximize flows to the WWTP. Excess peak flow treatment at PVSC's plant could be the most affordable and cost-effective option for dealing with additional wet weather flows. The inappropriate flow limit will chill such evaluations because such alternatives could be undermined by the need to comply with this arbitrary and unnecessary effluent limit. PVSC notes that other Publicly Owned Treatment Works (POTWs) in New Jersey do not have annual average flow limitations, or reporting requirements, included in their NJPDES discharge permits and require reporting only of the daily average and maximum flows (examples include, but are not limited to, Camden County Municipal Utilities Authority, Middlesex County Utilities Authority, Joint Meeting of Essex and Union Counties and Bergen County Utilities Authority). Thus, the flow limit must be deleted from the Permit.

- Part III, Table III-A-1, Parameter "Flow, In Conduit or Thru Treatment Plant, January thru December", Limit 330 Annual Average.
- Part IV, Sanitary Wastewater, § E.1.e.

13. I/I Identification and Reduction Requirement

The Permit inappropriately holds PVSC responsible for other permittees' actions in identifying and reducing I/I to meet the definition of non-excessive infiltration and non-excessive inflow. PVSC has two objections to this Permit requirement. First, there is no federal or state requirement to implement I/I reduction for the sake of I/I reduction, whether it be in a CSO or separately sewered system. There is no prohibition on the amount of inflow and infiltration in any collection system under federal or state law. Thus the requirement that the satellite systems reduce their I/I to federally defined non-excessive levels is not applicable to CSO control planning. In fact, a generic I/I reduction requirement undermines LTCP planning – which will identify the optimal I/I reduction level for each specific community. Second, this requirement appears to hold PVSC responsible for the other permittees' achievement of this legally inappropriate I/I reduction requirement. The Permit must make clear that any legally valid requirement for the other permittees to reduce their I/I is solely the responsibility of the localities and not PVSC.

NJDEP noted in response to comments that "STPs have broad authority within the powers granted by the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq., the Municipal and

County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and their respective enabling acts, and under the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq. to act to prevent untreated discharges within their service areas to develop and implement maintenance programs for their own systems as a condition of the sewer use agreements between the authority and its members.” (Pages 20-21 of 304). PVSC was not created under either the Sewerage Authorities Law or the Municipal and County Utilities Authorities Law; thus, those statutes do not apply in this case. The WPCA discusses authority to control ‘pollutants’ being contributed to a system. The definition of “pollutants”, found in N.J.S.A. 58:10-3(n), does not include flow. As noted above, PVSC contends that flow is not a pollutant which NJDEP can regulate.

PVSC notes that the Permit conditions which set forth NMC requirements for combined sewer systems inappropriately purport to address I/I from separately sewer areas. The NMCs legally only apply to combined sewer systems and not satellite communities with sanitary-only systems. The Permit cannot impose any such responsibility or liability on PVSC, and the following conditions must be revised accordingly.

- Part IV, Combined Sewer Management, § F.1.h.ii
- Part IV, Combined Sewer Management, § F.1.j.xii
- Part IV, Combined Sewer Management, § F.7.c

14. PVSC Cannot Unilaterally Modify or Revise Sewer Use Agreements

The Permit, as written would require PVSC to unilaterally modify or revise sewer use agreements, particularly to impose I/I reduction requirements. NJDEP can’t order PVSC to unilaterally modify an inter-jurisdictional sewer contract. Instead, any desired changes in practices by the localities must be specified in their respective NJPDES permits (to the extent the State has authority to do so). Once a legally binding requirement is imposed in the satellite CSO systems’ permits, then a change to the sewer use agreements may ensue. However, PVSC should not be in violation if another municipal entity refuses to change the sewer use agreement. The following conditions need to be amended.

- Part IV, Combined Sewer Management, § F.1.h
- Part IV, Combined Sewer Management, § F.7.c

15. Percent Removal Waiver Should Be Incorporated Into Permit

The Permit incorrectly rejected PVSC’s request for a percent removal waiver. PVSC requested a waiver of the percent removal requirements in accordance with N.J.A.C. 7:14A-12.3(b) and (c). The N.J.A.C. defines “significantly more stringent effluent limitations” as being more than 5 mg/L less than the permit concentration. PVSC’s permit limitations are 30 mg/L monthly average TSS and 25 mg/L monthly average CBOD₅. PVSC must consistently have effluent concentrations below 25 mg/L monthly average TSS and 20 mg/L monthly average CBOD₅ to meet the 85% removal requirement and has demonstrated this through its waiver

applications. In the NJDEP's response to comments it acknowledges "that PVSC may meet the definition of 'unreasonably low concentrations' as set forth at 40 CFR 133.103(e)2."

A waiver was not granted despite NJDEP's acknowledgment in the response to comments document that PVSC meets the criteria and qualifies for the percent removal waiver under wet weather conditions. That document also memorializes that USEPA concurs in the wet weather percent removal waiver (which is a common approach for CSO communities nationwide). PVSC appeals the denial of a waiver of the secondary treatment 85 percent removal requirement during wet weather. The Permit should specify "monitor and report" only for percent removal during wet weather conditions (defined as "whenever the collection system is materially influenced by wet weather runoff or snow melt.").

PVSC further appeals NJDEP's refusal to provide a percent removal waiver during dry weather conditions. PVSC submitted the requisite information in support of this waiver/reduction to NJDEP several months prior to issuance of the Permit. However, the Permit does not include the requested dry weather waiver or reduction from the 85 percent requirement without any appropriate justification. Accordingly, the Permit should specify (1) "monitor and report" during wet weather conditions for percent removal and (2) either monitor and report during dry weather conditions or a percent removal requirement below 85 percent which the PVSC facility can meet. Moreover, the percent removal requirement addresses two conventional pollutants – Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) – for which the Permit already specifies technology-based effluent limits that ensure there is no water quality problem.

The percent removal requirement is a regulatory error which should not be allowed to interfere with PVSC plant optimization and the maximization of wet weather flows. Also, the current permit language contemplates (but is expressly not yet effective) waiving the 85% removal requirements for individual days above a specified daily average flow condition. This is contrary to the regulation, which provides for a waiver of the requirement, which is a monthly average limitation, not daily limitation, or the establishment of a less stringent limitation. Additionally, daily average flow alone is not indicative of precipitation. During a wet weather event, the instantaneous flow rate is the gauge for treatment capacity not the daily average flow.

Finally, the Permit's failure to remove the wet weather percent removal requirement will likely cause PVSC to have to limit wet weather flows which it could otherwise treat. Likewise, this provision will severely complicate CSO LTCP planning because PVSC and the municipal systems will want to evaluate options for PVSC to treat higher levels of wet weather flows if doing so would be a part of the cost-effective regional LTCP. The unexplained failure to address the percent removal issues in the permit will have significant adverse impact on the LTCP planning process and must be addressed promptly through this appeal if PVSC is to have any chance of meeting the LTCP development schedule.

To implement these necessary changes, the following conditions should be revised:

- Part III, Table III-A-1, Parameter "Solids, Total Suspended, January through December, Sample Point "Percent Removal," Limit 85 Monthly Ave Minimum

- Part III, Table III-A-1, Parameter “BOD, Carbonaceous 5 Day, 20°C, January through December, Sample Point “Percent Removal,” Limit 85 Monthly Ave Minimum
- Part IV, Sanitary Wastewater, § H.3

16. Inconsistency in Free Cyanide Effluent Limit Effective Date and Sample Type

The Permit is internally inconsistent on the effective date of the free cyanide effluent limit. One section of the Permit (Part IV) specifies an effective date of EDP+13 while Table III-A-1 indicates (incorrectly) an effective date of July 1, 2015. Table III-A-1 should be revised to specify an effective date of EDP+13.

Also, Table III-A-1 lists the sample type for free cyanide as a 24-hour composite. According to the analytical method used to analyze for free cyanide, the sample type is a grab. PVSC requests that the free cyanide parameter in Table III-A-1 be changed to specify a grab sample as the collection method.

- Part III, Table III-A-1, Parameter “Cyanide, Free”

17. TMDL Must Be Completed Prior to Mandating Compliance with Water Quality Standards

The Permit mandates compliance with water quality standards despite the absence of a completed TMDL. The CSO Policy requires the completion of TMDL activities where it is apparent that other sources significantly affect the ability of the receiving water to achieve standards. The following sentence from the National CSO Policy should be added to the provision cited below: “Where WQSs and designated uses are not met in part because of natural background conditions or pollution sources other than CSOs, a TMDL, including a WLA and LA, or other means should be used to apportion pollutant loads;”

- Part IV, Combined Sewer Management, § G.4.g

B. Additional Specific Objections to the Permit

1. Permit Renewal Application Deadline Should be Extendable

Federal law provides that the deadline for submission of an NPDES permit renewal application can be extended from 180 days prior to the permit expiration up to the expiration date for permits issued to publicly owned treatment works. 40 C.F.R. § 122.21(d). The Permit incorrectly omits this language. The following condition should be revised to be consistent with 40 C.F.R. § 122.21(d):

- Part II, § B.2.b

2. New Reopener Added

The section cited below was not included in the pre-draft or the draft Permit. PVSC and the public were not afforded the opportunity to comment on this clause. The Permit requires the development and submission of a CSO LTCP, not the implementation. Therefore, this clause is inapplicable and should be deleted from the Permit. Additionally, under this provision, the NJDEP would not evaluate sources other than CSOs that may significantly contribute to water quality impairments but rather assumes that water quality impairments as required by the CSO Policy. This could result in the LTCP meeting TMDL requirements but still being found to trigger this incorrect reopener condition.

Moreover, this proposed reopener is beyond the scope of N.J.A.C. 7:14A-6.2(a)(10), which is cited by the NJDEP as its legal basis for the inclusion of this condition. Therefore, the condition is legally impermissible.

Further, the response to comments document is legally incorrect in asserting that the CSO Policy requires such a reopener. The CSO Policy states that a reopener clause "should" be included in CSO Phase II (LTCP implementation) permits but not Phase I (LTCP development) permits. This is a Phase I permit. CSO Policy at Part IV.B.2.

This is a substantial change which should have triggered a requirement to republish the permit for comment. Because the CSO reopener is beyond the scope of N.J.A.C. 7:14A-6.2(a)(10) and directly inconsistent with the CSO Policy (such a non-mandatory reopener is only appropriate for Phase II permits rather than these Phase I permits) Section C.1 must be deleted.

- Part II, § C.1

3. Notification of "Operational Alterations"

Applicable federal and state regulations only require notification to NJDEP of any planned physical alterations or additions to the permitted facility when the alteration is expected to result in a significant change to the permittee's discharge and/or residual use or disposal practices. The notification requirement does not apply to undefined "operational" alterations. Furthermore, the notification requirement is already addressed in Part I of the Permit. Accordingly, the Permit should be revised to remove the requirement to provide notice to NJDEP of "operational alterations."

- Part I § A.1.e, Planned Changes
- Part II, § B.4

4. Inconsistent Sampling Methods

PVSC seeks clarification for the sample type requirements for the following parameters:

- (1) Parachloro-m-cresol
- (2) Phenols
- (3) 1,2-Dichlorobenzene
- (4) 1,3-Dichlorobenzene
- (5) 1,4-Dichlorobenzene

Table III-A-2 for the Effluent Annual WCR requires a grab sample for these parameters and Table III-C-1 requires a 24-hour composite sample for these parameters. Table III-A-2 should be revised to specify 24-hour composite samples for Parachlor-m-cresol and Phenols. Table III-C-1 should be revised to specify grab samples for 1,2-Dichlorbenze, 1,3-Dichlorobenzen and 1,4-Dichlorobenzene, in accordance with an approved analytical method for these parameters.

- Table III-A-2: Surface Water WCR - Annual Limits and Monitoring Requirements
- Table III-C-1: Surface Water WCR - Annual Limits and Monitoring Requirements

5. Inconsistent Reporting Frequency

PVSC seeks clarification on the permit reporting requirements cited below. In one part of the permit annual reporting is required while semi-annual is specified elsewhere. Part IV, section A.1.i conflicts with Part III of the Permit because Part IV requires semi-annual reporting while Part III specifies annual reporting. Part III is correct. Accordingly, Part IV should specify annual rather than semi-annual reporting.

- Part IV, Sanitary Wastewater, § A.1.i

6. PCB Requirements Should Not Be Included in the Permit

PVSC received a NJPDES permit modification in November 2007 requiring PCB monitoring. The 2007 permit modification stated, "If, based on the review of the Final Report, the Department determines that a PMP is required, the permittee shall prepare and submit a PMP to the Department" PVSC's Final Report was submitted in May of 2010. To date, NJDEP has not defined background concentrations or what information will be utilized to determine background concentrations nor has it defined the criteria for the basis of determining if a PCB Pollutant Management Plant (PMP) is required.

PVSC has performed a comparison of its effluent PCB concentrations from the monitoring required by the Permit to the receiving water body's concentrations published as part of the Contaminant Assessment Reduction Project (CARP)/NJ Toxics Reduction Plan. PVSC's average effluent concentration is equivalent to the receiving water body's PCB concentration. Additionally, the results of the CARP study indicates that the receiving water body is impaired for PCBs due to the legacy contaminants in the river sediments. Therefore, PVSC is not

discharging “elevated” effluent concentrations of PCBs to the receiving water and a PCB PMP should not be required. PVSC requests that this requirement be removed from its NJPDES Permit.

If the requirement is not removed, the Permit must be revised to clarify that any PCP PMP requirement will be implemented via major permit modification and not by letter from NJDEP. That will ensure the public and PVSC will have a right to review and comment on the PMP decision and to appeal such a decision if warranted.

- Part IV, Sanitary Wastewater, § D.3

7. Color Discharge Requirement Should Be Deleted

The Permit provision cited below provides that the “discharge shall not produce objectionable color or odor in the receiving stream.” This Permit condition is based upon an “objectionable” standard that is extremely subjective and fails to provide fair notice as to what contemplated conduct is prohibited. To the extent there is even an applicable state water quality standard pertaining to color, federal regulations at 40 C.F.R. § 122.44(d)(1)(i) & (vi) require specific effluent limitations be developed to implement a narrative water quality standard. Section 122.44(d)(1)(vi) specifically notes that if a discharge has the reasonable potential to cause, or contribute to an excursion above “a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits” using one of the identified approaches. EPA, NPDES Permit Writer’s Manual, USEPA Docket # 833-K-10-001, at § 6.4 p. 6-31 (Sept. 2010) (“If a permit writer has determined that a pollutant or pollutant parameter is discharged at a level that will cause, have reasonable potential to cause, or contribute to an excursion above any state water quality standard, the permit writer must develop WQBELs for that pollutant parameter.”); PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology, 511 U.S. 700, 716 (1994) (“Washington’s Class AA water quality standards are typical in that they contain several open-ended criteria which . . . must be translated into specific limitations for individual projects.”).

In addition, the reasons set forth pertaining to permit conditions requiring compliance with water quality standards as set forth in comment Section I.A.5, supra, apply here. This condition also appears to be based on an erroneous interpretation of law. N.J.A.C. § 7:14A-17.6(j). For these reasons permit condition IV.E.1.c should be deleted.

- Part IV, Sanitary Wastewater, § E.1.C

8. Pretreatment Requirement on PVSC to Prevent Illicit Discharges Inappropriately Imposed on PVSC

The Permit requires PVSC to implement and enforce its approved pretreatment program to “prevent” the introduction of pollutants into its system that would cause interference or pass through. The prohibition against interference and pass through applies to the industrial user, not the POTW. 40 C.F.R. § 403.5(a). A POTW cannot appropriately be held liable when a third party, such as an industrial user, illegally causes interference or pass through. The word

“prevent” in the following condition must be changed to “prohibit” as required by 40 C.F.R. § 403.5(a). PVSC can prohibit but not prevent such discharges. “Prohibiting” such discharges is expressly what the federal regulation requires.

- Part IV, Sanitary Wastewater, § F.1.a

9. Quarterly Progress Reports Are Excessive

Quarterly progress reports of CSO activities are excessive. These reports are resource-intensive and will require coordination with other municipalities. At most, semi-annual progress reports should be required. Furthermore, the reporting requirement would require the permittees to evaluate the effectiveness of CSO controls every 90 days. Such a requirement is unprecedented in our experience nationally. We know of no other permit that requires such an evaluation on a rolling 90-day basis. Such a requirement, even if possible and/or practicable, would consume enormous resources tracking yesterday’s progress rather than a more appropriate balance of resources toward tomorrow’s progress. Furthermore, the first progress report should not be required until 60 days following the first full six (6) month period after the effective date of the Permit. The permittees will need at least six (6) months to set up systems for coordination and begin actually performing the work before they should be required to start reporting on their progress. Taken in isolation, a reporting requirement may not seem significant. In reality and over time and with unduly frequent repetition, it is actually a huge issue for program management as it must be certified as being true, accurate, and complete and relates directly to permit compliance. Such reports consume disproportionate management and staff resources and are very significant burdens – especially when viewed in context of all the other requirements that must be performed at the same time.

Finally, measuring effectiveness every 90 days is inconsistent with the baseline monitoring program in the permit (Part IV, § D.3.c & d) and the post-construction monitoring requirements in the CSO Policy, including Part II.C.9 and State law incorporating same.

- Part IV, Combined Sewer Management, § D.1.c & d
- Part IV, Combined Sewer Management, § D.4

10. Requirement to Report Activities of Others Should Be Deleted

PVSC should not be legally obligated to report activities reported to them by other CSO permittees. If NJDEP wants such information, then it should require those other CSO permittees to report directly to the NJDEP. In addition, this language needs further clarification to be consistent with the response to comments which indicated NJDEP was not intending to require reporting the activities of other permittees. We note that PVSC cannot be put into a position of certifying as “true, accurate, and complete” information provided by other permittees. While there can be combined submittals, the Permit must specify that permittees are only required to certify their portion of the submittal. This is a critical legal issue.

- Part IV, Combined Sewer Management, § D.1.d

11. CSO Recordkeeping Should Not Apply to PVSC

The recordkeeping requirements for CSO discharges are inappropriately included in PVSC's Permit despite the Permit acknowledging in other places that PVSC does not own/operate any CSO outfalls. The response to comments document states that the recordkeeping provision in the Permit would be clarified so that it only applies to the sections of "the CSS that permittee owns and operates." This promised modification did not occur. Accordingly, the CSO-related recordkeeping requirements in the Permit must be clarified as not applying to PVSC.

- Part IV, Combined Sewer Management, § B.1.a

12. Sewer Map Submission Requirement Should Only Include Infrastructure Owned and Operated by PVSC

The following section should be clarified to reflect that PVSC is not required to submit a map of the entire sewer system (it is only required to submit a map of the CSO infrastructure owned and operated by PVSC).

- Part IV, Combined Sewer Management, § D.2.b

13. SOP Cannot "Ensure" Specified Results

The Permit establishes minimum specific SOP requirements in excess of NJDEP authority and the authority of PVSC by requiring, for example, that the SOPs contain "detailed instructions for ... the entire collection system that conveys flows to the treatment works." PVSC does not have the authority or the responsibility for "the entire collection system." This entire section must be limited to only those areas owned/operated by PVSC as acknowledged in the response to comments document. Moreover, it must further be limited only to the CSO areas of the collection system. Despite NJDEP's agreement in the response to comments document on this issue, the Permit was not properly amended to reflect this legal arrangement.

Moreover, the requirement that an SOP "ensure" that no basement backups, sewage overflows, street overflows of any type occur is beyond a permittee's physical control and is simply impossible to achieve given the variety of unforeseen factors that influence even the best run sewer system. The word "ensure" should be struck from each subsection and replaced with appropriate language that reflects a requirement to ensure a well-operated system. We suggest the requirement in the following condition be revised to require the development of SOPs to "minimize" basement backups, sewer overflows, etc. Otherwise, NJDEP is creating a double violation for the same act – one violation for an unavoidable unpermitted discharge and a second violation for not having an SOP that would prevent the unavoidable discharge.

- Part IV, Combined Sewer Management, § F.1.j

14. Operation and Maintenance (O&M) Frequency Need Not Be Set by Manufacturer's Recommendation

O&M frequency based upon manufacturer's recommendations and equipment manuals are often based upon extremely conservative approaches with the objective of limiting the manufacturer's potential liability. Furthermore, such manuals and recommendations are generic and do not necessarily reflect the specific needs of the system to which they must be tailored. The imposition of such O&M requirements upon PVSC is inappropriate. The requirement in the condition cited below should be revised accordingly to state that "O&M should be performed in consideration of manufacturer's recommendations and the permittee's operational experience."

- Part IV, Combined Sewer Management, § F.1.i

15. Intrusion and Flooding Can Be Minimized, But Not Eliminated

The Permit seeks to prevent any intrusion due to high tides and/or receiving water flooding into the entire collection system owned/operated by the permittee that conveys flows to the treatment works. It is inappropriate to require that no intrusion occur. Some intrusion will occur with any type of tide gate, flapper valve, etc. None of these devices will seal perfectly every time under the conditions they operate in, particularly as they age.

The Permit condition cited below should be revised to require that "co-permittees minimize any intrusion into their collection system due to high tides and/or high CSO receiving water levels."

- Part IV, Combined Sewer Management, § F.1.j.vii

16. In-Line Storage Requirement

The Permit condition requiring to "in-line storage" is overbroad and unnecessary. First, there is no rational basis presented for requiring use of "the entire collection system . . . for in-line storage." Such an overbroad requirement suggests that every foot of pipe has to be used for in-line storage, a level of effort that will be completely counterproductive from a time and cost perspective. Also, such a level of in-line storage would certainly cause massive system problems such as basement backups because there would be no margin of safety in the sewer lines. Second, the requirement to minimize the introduction of sediment "in the entire collection system" is also excessive and worded in a vague fashion such that one cannot know the degree of action required. Third, the requirement to operate in accordance with Section F.1. is overbroad to the degree that this section establishes requirements beyond those necessary to ensure compliance with the CSO Policy. At a minimum, the provisions and requirements must be expressly modified to contain a limitation "as necessary to ensure compliance with the federal CSO Policy." Furthermore, it is not clear why in-line storage would be appropriate in the small part of the collection system owned and operated by PVSC (especially given the very real risk of basement back-ups associated with such storage).

The Permit conditions cited below should be revised as follows:

Section F.2.a: The Permittee shall maximize the storage capacity of the collection system to the extent practicable in order to minimize CSO volumes.

Section F.2.b: The Permittee shall minimize the introduction of sediment and obstructions in the entire collection system which it owns and operates through the implementation of NMC best management practices such as street sweeping and catch basin cleaning.

- Part IV, Combined Sewer Management, § F.2.a & b.

17. Characterization Information Requirement Too Broad

The Permit requires characterization information for the specific locations that have historically experienced the following: blockages, bottlenecks, flow constrictions, sewer overflows including to basements, streets and other public and private areas or related incidences. This requirement is far too overbroad. The Permit is concerned with addressing wet weather capacity in the system. Thus, any requirement to identify and address areas of concern should be limited to areas where there have been chronic, capacity-related overflows. That, in and of itself, will likely be a major engineering task. Adding in irrelevant basement backups and other collection system releases due to non-capacity reasons will divert very limited resources from the already extensive task at hand. Also, the requirement to identify chronic, capacity-related overflow locations should be limited to the past five years as the existing Permit provision impermissibly does not specify any time period for the evaluation.

In addition, the Permit requires a spreadsheet, organized by CSO outfall, as appropriate, of the capacity, dimensions, age, type of material, and specific location of the eight listed items. These listed items include: significant industrial users and specific locations that have experienced blockages, bottlenecks, etc., including basements, streets and other public and private areas. It also requires the “capacity, dimensions, age, [and] type of material” of specific industrial users and specific locations. This information is irrelevant, resource intensive, and without a legal basis. Any industrial user-related issues will be dealt with under NMC measure 3 (Part IV, Combined Sewer Management, § F.3 of the Permit). The following condition must be amended, consistent with the changes discussed herein.

- Part IV, Combined Sewer Management, § F.1.f

18. Characterization of the Entire Collection System

Part IV, Combined Sewer Management, § F.1.e.iii requires “an updated characterization of the entire collection system owned/operated by the permittee . . .” This requirement is overly broad and will cause greatly increased costs as well as needless diversion of limited public resources. Instead, the requirement should be limited to pipes greater than 12 inches and only those more than ten years old. Lesser diameter pipes, along with newer pipes, are not relevant for purposes of the regional wet weather capacity analysis and planning process.

- Part IV, Combined Sewer Management, § F.1.e.iii

19. GIS Mapping Requirement Is Overbroad

Part IV, Combined Sewer Management, § F.1.g would require the co-permittees to delineate all of the information from section F.1.f onto a GIS map. This requirement is acceptable as long as section F.1.f is limited as specified by our comments above (limiting section f.viii to only chronic, capacity-related overflow locations and the characterization in section F.1.e.iii to pipes greater than 12 inches in diameter, and only pipes greater than 10 years old Section I.B.18,). Otherwise, we object to this overly broad mapping requirement. This will require a change to the following condition:

- Part IV, Combined Sewer Management, § F.1.g

20. PVSC Cannot Unilaterally Revise Rules, Ordinances and/or Sewer Use Agreements for Satellite Systems

The Permit impermissibly requires PVSC to unilaterally impose the following requirements on the satellite systems:

- i. operate and maintain their treatment works,
- ii. identify I/I and reduce it to meet the definition of non-excessive infiltration (in combined and separately sewered areas) and non-excessive inflow (in separately sewered areas) where both terms are defined in N.J.A.C. 7:14A-1.2, and
- iii. identify and eliminate interconnections and cross-connections in storm sewers.

Part IV, Combined Sewer Management, § F.1.h. The Permit specifies that PVSC shall identify these requirements within six months of the effective date of the Permit and that the localities shall achieve these requirements by the deadline for submittal of the LTCP.

These requirements are inappropriate for several reasons. First, PVSC cannot unilaterally dictate these requirements to the other permittees. As previously stated, NJDEP noted in response to comments that “STPs have broad authority within the powers granted by the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq., the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and their respective enabling acts, and under the Water Pollution Control Act. (WPCA), N.J.S.A. 58:10A-1 et seq. to act to prevent untreated discharges within their service areas to develop and implement maintenance programs for their own systems as a condition of the sewer use agreements between the authority and its members.” (Pages 20-21 of 304). PVSC was not created under either the Sewerage Authorities Law or the Municipal and Counties Utilities Authorities Law; thus, those statutes do not apply in this case. The WPCA discussed authority to control “pollutants” being contributed to a system. The definition of “pollutants”, found in N.J.S.A. 58:10-3(n) does not include flow. As noted above, PVSC contends that flow is not a pollutant. Also as previously stated PVSC cannot unilaterally

reform legally binding bilateral contracts. Instead, NJDEP must impose these requirements in the other permittees' permits and then both PVSC and the other permittees can rely on these levels of control in the LTCP Planning process.

Second, there is no legal requirement to meet the definitions of non-excessive I/I. Those definitions apply only in the grant funding and percent removal provisions of the law and are not an independent regulatory requirement. I/I reduction is just one part of wet weather capacity control. The optimal level of I/I reduction will not be known until regional CSO LTCP planning advances to the alternatives analysis stage. We are not aware of any LTCP which has incorporated the I/I levels in these definitions as required levels for satellite systems to meet.

Finally, the requirement to identify and eliminate interconnections and cross-connections by the deadline for the LTCP submittal would require a massive investigative effort for little or no gain in the larger regional wet weather capacity context. Such a requirement could potentially require the localities to televise every foot of their collection systems and eliminate all interconnections/cross-connections by the LTCP submittal deadline. This would be enormously expensive for no purpose in relation to regional wet weather capacity planning. Even if such a requirement made sense in the context of LTCP development – and it does not – PVSC does not have the authority to unilaterally impose such a requirement on the CSO localities. We have never seen such a requirement included in any NPDES permit. Section F.1.h must be removed from the Permit. NJDEP can put appropriate provisions regarding collection system management in the co-permittees permit but not in PVSC's.

- Part IV, Combined Sewer Management, § F.1.h & F.1.j.xii (as to the excessive I/I issue)

21. SOP Requirements are Overly Broad and In Excess of Legal Authority

Section F.1.j of Part IV, Combined Sewer Management, requires the development of specific SOPs. This section should clarify that none of these SOPs are required of PVSC. Alternatively, if any do apply to PVSC, the Permit should be revised to specify the PVSC-applicable requirements. PVSC is entitled to have the opportunity to comment on any such designation of PVSC responsibility.

Assuming section F.1.j is only applicable to the other permittees, PVSC still objects to several provisions as follows:

Section F.1.j.i requires the permittees to “ensure” there will be no sewer overflows (not including permitted CSOs). This is impossible and a set-up for failure. It is one thing to say that overflows are illegal. It is another to require a permittee to develop an SOP to prevent illegal overflows when it is common knowledge that every sewer system will experience overflows from time-to-time no matter how well it is managed. NJDEP of all organizations knows this reality. Thus, any SOP requirement must be directed to the possible rather than the impossible. Otherwise, it is arbitrary and capricious as it creates a double liability for each overflow (liability for the actual overflow and then liability for the SOP not preventing the overflow). We have the same comment for section F.1.j.iv (i.e., ensure there will be no dry weather overflows).

As to section F.1.j.iv, we also note that the prohibition against CSO dry weather overflows derives from the NMC section of the CSO Policy. The NMCs are best management practices rather than strict liability absolute requirements. Moreover, as a technology-based requirement, the prohibition against dry weather overflows is subject to an upset defense. Thus, it is legally impermissible to convert this best management practice requirement into a strict liability requirement through the SOP provision.

For these reasons, section F.1.j.i must be revised so that the SOP requirement reads: “Ensure that the entire collection system ... conveys flows ... in such a way as to not result in minimize sewage overflows....”

Additionally, section F.1.j.iv must also be revised as follows: “~~Ensure that there will be~~ no Minimize dry weather overflows....”

- Part IV, Combined Sewer Management, § F.1.j.i & .iv

22. Removal of Obstructions within One Week

Section F.1.j.x of Part IV, Combined Sewer Management, requires the permittees to remove obstructions (such as sediment, grease) within one week of discovery in the collection system. The one-week requirement is arbitrary and capricious, bears no relation to the nature or cause of potential obstructions, and will have the various permittees engaging in unnecessary and endless sewer system cleaning that has no relation to wet weather capacity issues. In many cases, outside contractors will be necessary to perform the cleanings and one week is not enough time to mobilize them. There are other factors, such as budget, procurement, traffic control, site accessibility, and other system priorities which make the one-week deadline arbitrary and capricious. Further, it is inappropriate to mandate that, regardless of the effect, obstructions be removed “as soon as practicable” as this may create an O&M violation unrelated to any likelihood of illegal or unacceptable discharge. This requirement, which is not found in either the CSO Policy or New Jersey law, is a substantial error in interpretation of the enabling legislation and interpretation of applicable rules. It must be deleted from the permit or revised to specify “as soon as practicable taking into account factors such as the severity and nature of the obstruction.”

- Part IV, Combined Sewer Management, § F.1.j.x

23. Immediate Steps to Take Corrective Action for All System Defects

The Permit provision requiring the other permittees (and PVSC to the extent it applies to PVSC) to take immediate steps to “repair damage and/or structural deterioration ... of the entire collection system owned/operated by the permittee” is overly broad, arbitrary and capricious, and legally impermissible. All sewer systems have defects. Typically those defects are classified into priority groups and addressed on that basis. No sewer system is ever in the process of addressing all structural deterioration. If everything is a priority, nothing is. As such, this requirement is inconsistent with the CSO Policy. Among other things the CSO Policy requires the consideration of a municipality’s financial situation and establishes a rational approach through the LTCP to address sewer issues rather than requiring everything to be done all at once.

This Permit language guarantees that PVSC will be in violation of the Permit. It must be revised to require that damage and structural defects, as well as unpermitted discharges and dry weather overflows, are prioritized and addressed as soon as practicable. We note that the Permit reflects this concept in regard to the Asset Management requirement in section F.1.k (“repair/replacement needs listed and scheduled according to priority/criticality”). Section F.1.j.xi should be modified to be consistent with the prioritization approach required in F.1.k.

- Part IV, Combined Sewer Management, § F.1.j.xi

24. SIU Information Requirement

Part IV, Combined Sewer Management, § F.3.a imposes extremely resource-intensive requirements associated with identifying, among other things, the loading and toxicity of the Significant Indirect/Industrial Users (“SIUs”) for the entire collection system which is owned/operated by the permittee and to prioritize the potential environmental impact of these SIUs by CSO outfall. This provision is overbroad. As recognized by EPA’s Guidance for Nine Minimum Controls, at 4-3, where the relative contribution of nondomestic flow to the total dry weather flow is small, the effect of increasing pollutant control might be insignificant. Furthermore, the guidance provides, at 4-2, that where a municipality has a large number of nondomestic users, “the municipality should focus on those facilities with the greatest potential impact with regard to CSOs . . . based on the size of the discharge, the concentration of pollutants that might be contributing to water quality criteria exceedances, or the proximity of the nondomestic user’s discharge point to the CSO outfall.” Therefore, requiring this evaluation for SIUs is inappropriate. Requiring loading and toxicity information as set forth in section F.3.a also should not be required. To be consistent with the NMC guidance, the first sentence of this section should be replaced by the following:

The permittee shall identify the locations and associated CSO outfalls of those significant industrial users with the greatest potential impact with regard to CSOs and include this information in the characterization portion of the O&M plan

- Part IV, Combined Sewer Management, § F.3.a

25. Asset Management Plan Submission Should Be Deferred

The Asset Management Plan requirement subjects PVSC to an additional massive task during the first 12 months following permit issuance. It will likely be the elephant that breaks the camel’s back. The Permit must be revised to allow permittees to submit individual schedules for developing an Asset Management Plan. Time frames will vary depending on the state of each permittee’s current asset management programs. PVSC believes an appropriate outside deadline should be six months following LTCP submittal. This will allow permittees who do not have a formal asset management plan to defer major work on such plans until the region is through most of the LTCP development process. Again, if the LTCP is a priority (and it should be) then the Permit must schedule secondary requirements at a later time so as not to undermine LTCP development. Indeed, PVSC believes that any Asset Management Plan requirement should be

deferred until the next permit cycle so as to not undermine the resources needed for LTCP development.

- Part IV, Combined Sewer Management, § F.1.k

26. PVSC Cannot Enforce Rules and Regulations on All Illegal Connections/Discharges into the POTW in Other Permittees' Jurisdictions If It Lacks Authority to Do So

The Permit purportedly requires PVSC to enforce rules and regulations on illegal connections and unauthorized discharges into the POTW. In many cases, PVSC does not have the authority to enforce such requirements within the collection systems of the other municipalities, as it does not own/operate such areas. These provisions are beyond NJDEP's authority to impose upon PVSC. To the extent these requirements are appropriate, they must be directly established by NJDEP as requirements for the other municipalities and not in PVSC's permit, as necessary to ensure CSO program compliance.

As previously stated, NJDEP noted in response to comments that "STPs have broad authority within the powers granted by the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq., the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and their respective enabling acts, and under the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq. to act to prevent untreated discharges within their service areas to develop and implement maintenance programs for the own systems as a condition of the sewer use agreements between the authority and its members." (Pages 20-21 of 304). PVSC was not created under either the Sewerage Authorities Law or the Municipal and Counties Utilities Authorities Law; thus, those statutes do not apply in this case. The WPCA discusses authority to control "pollutants" being contributed to a system. The definition of "pollutants", found in N.J.S.A. 58:10-3(n), does not include flow. As noted above, PVSC contends that flow is not a pollutant.

- Part IV, Combined Sewer Management, § F.7.b

Staying this Permit condition will have no environmental impact given that it requires actions that are not within PVSC's authority in any event.

27. System Characterization Requirement of Entire Collection System Is Too Broad

The Permit would require a characterization of "the entire collection system that conveys flows to the treatment works." This provision is overbroad and inappropriate for several reasons.

First, PVSC cannot be required to submit information for other permittees' systems. PVSC will cooperate with the satellite systems but cannot agree to be legally liable to characterize their "entire collection system." PVSC will characterize its system and the satellite systems should be required to characterize theirs.

Second, not all of the collection system influences areas where CSOs occur. Irrelevant areas (rather than the “entire collection system”) should be excluded. For example, tertiary and isolated areas of the localities’ systems are largely irrelevant for CSO LTCP planning purposes. Is the goal is to develop a CSO LTCP or a plan that will address any possible overflow in the entire collect system? Those are two dramatically different evaluations with the latter being much more involved and expensive. PVSC urges NJDEP to focus the Permit only on LTCP-related areas of the satellite systems. The LTCP development group does not and should not care why an isolated subdivision may have a local capacity issue.

Third, PVSC lacks authority to mandate evaluations of those areas that it neither owns nor operates. This provision must be amended to reflect that it is limited to only that part of the collection system that PVSC owns and operates and require only evaluations of system inputs directly impacting CSO areas, if applicable.

Fourth, the requirement is overbroad. It should be limited to only pipes greater than 12 inches in diameter unless smaller sized lines are important to LTCP planning in a particular area. If permittees are to be successful in developing a regional LTCP within the time frames imposed in the Permit, then permittees must be allowed to focus their efforts on what matters to LTCP development. That alone will be a monumental and expensive task. Having to address irrelevant parts of the system at the same time diverts precious resources and management attention and is a set up for failure.

Fifth, this extensive characterization requirement is well in excess of the requirements in the CSO Policy (Part II.C.1), particularly for small CSO systems (see Objection 38, infra).

- Part IV, Combined Sewer Management, § G.1.a. & b

28. CSO Monitoring for System Characterization Should Be More Flexible

The Permit requires any monitoring to occur in accordance with NJDEP’s QA/QC program. Significant data collection has previously occurred and it would be inappropriate to retroactively apply this provision to such information. Also, all schedules of compliance must allow appropriate time for NJDEP to review and approve such QA/QC programs. Therefore, amendments to the LTCP schedule must be included to reflect that LTCP deadlines are only triggered following the approval of such plans given that NJDEP’s timing for approval could delay the ability to complete the LTCP program.

It is legally incorrect to retroactively impose new QA/QC requirements on technical studies which were done under other NJDEP-approved procedures.

- Part IV, Combined Sewer Management, § G.1.d.iii

29. Supplemental CSO Team Requirement Is Inappropriate

The Permit would require the invitation of affected/interested public to join a “Supplemental CSO Team” to work with PVSC’s assigned staff, consultants, and/or contractors. This provision is unnecessary and beyond NJDEP’s authority. There is no basis for removing the flexibility inherently provided to a municipality in developing a plan for public participation and, instead, dictate a specific approach, right down to specifying the name of the advisory group. The sections referenced below should be deleted from the Permit.

- Part IV, Combined Sewer Management, § G.2.b.ii
- Part IV, Combined Sewer Management, § G.2.c

30. Treatment of Residual Flows Requirement Not Consistent with Regulation

The Permit contains an important wording error in relation to the level of treatment for residual sewer overflows. Whereas the CWA Section 402(q), 33 U.S.C. § 1342(q), and N.J.A.C. 7:14A-11.12 require that “Combined sewer flows remaining after implementation of the NMCs and within the criteria . . . should receive minimum treatment. . . .” the Permit impermissibly changes “should” to “shall”. This legal wording error in the following section must be corrected.

- Part IV, Combined Sewer Management, § G.4.f

31. Development of Information Pertaining to the Presumption or Demonstration Approach Should Apply Only to the Appropriate Permittee

The Permit inappropriately requires PVSC to develop information regarding the presumption or demonstration approach. Inasmuch as PVSC does not own/operate any CSO locations or facilities it cannot be required to develop an LTCP for the satellite systems. PVSC can only be legally required to evaluate options for the maximization of wet weather flows at its treatment plant. LTCP planning beyond that issue must be legally imposed on the satellite systems. PVSC is willing to assist the satellites in the LTCP development process but cannot assume a legal responsibility to do so. The Permit must be revised to reflect this clear distinction in LTCP planning responsibilities between PVSC and the localities.

- Part IV, Combined Sewer Management, § G.4.f

32. Presumption Approach Need Only Meet One of the Alternatives

PVSC appeals what appears to be a critical clerical error. The Permit requires that the permittee must demonstrate that “each” of the three presumption approach options is being met. Conversely, the CSO Policy, as well as N.J.A.C. 7:14A-11.12 Appendix C, specify that only “one” of the criteria must be met. Accordingly, the following correction must be made to the

section cited below: "The permittee must demonstrate that each one of the following options below is being met."

- Part IV, Combined Sewer Management, § G.4.f

33. Cost/Performance Considerations Should Be Clarified

The Permit conditions associated with cost/performance considerations should clarify that knee-of-the-curve analyses are not used as an additional or independent basis to impose further CSO reductions where this is not necessary to achieve applicable water quality standards.

- Part IV, Combined Sewer Management, § G.5

34. Maximizing Treatment at the Existing STP Is Inappropriate

The Permit inappropriately requires that flows receive treatment to the greatest extent practicable. Applicable requirements only impose a duty to maximize flows to the wastewater plant, not a separate additional requirement that once such flows are within the wastewater plant, they must be demonstrated that the removal of the pollutants was maximized within those flows. Further, USEPA's and (subsequently) NJDEP's refusal to authorize blending prevents PVSC from obtaining a greater degree of treatment of flows than would otherwise be available. Permit condition IV.G.7 should be deleted.

Also, the requirement to provide "treatment to the greatest extent practicable" is inconsistent with the CSO Policy (Part II.C.4.a.iii) and corresponding New Jersey law, which specify the minimum treatment requirements.

- Part IV, Combined Sewer Management, § G.7

35. Implementation Schedule Includes Requirements that Are Inapplicable to PVSC

The Permit purports to inappropriately require the submission of information regarding the measures necessary to control CSOs that PVSC neither owns nor operates. For example, PVSC cannot unilaterally develop a construction or financing schedule for the localities. PVSC can develop a schedule for implementing maximum wet weather treatment at the treatment plant but that must be the extent of PVSC's legal obligation. PVSC cannot develop or impose an LTCP for the satellite systems of other permittees. Accordingly, this Permit requirement must be revised.

- Part IV, Combined Sewer Management, § G.8

36. Compliance Monitoring Program Should Not Apply to PVSC

The requirement for PVSC to submit a compliance monitoring plan is inappropriate as PVSC neither owns nor operates the CSO outfalls. Making this requirement applicable to PVSC

is inconsistent with NJDEP's earlier acknowledgements that no CSO monitoring-related requirements should be applicable to PVSC under the circumstances. Accordingly, this requirement in the following section must be removed from the Permit.

- Part IV, Combined Sewer Management, § G.9

37. Application of Permittee's LTCP Responsibilities to PVSC

The Permit requires PVSC to submit "an LTCP that addresses all nine elements in Part IV.G." Any LTCP applicable to PVSC must be directly related to its ownership and operation of the wastewater plant and not the localities' collection systems. This provision must be amended to reflect this critical legal limitation.

As drafted, Part IV, Combined Sewer Management, § G.10 would require PVSC and other municipalities to work cooperatively

to ensure the LTCPs are consistent. The LTCP documents must be based upon the same data, characterization, models, engineering and cost studies, and other information, where appropriate. Each permittee is required to prepare the necessary information for the portion of the system that the permittee owns/operates and provide this information to the other permittees within the system in a timely manner for LTCP submission.

Requirements pertaining to PVSC's LTCP submissions and obligations are inappropriately based upon the assumption that the actions by other municipalities will be timely and appropriate. To the extent PVSC is required to consider actions by other municipalities, PVSC's time frame for responding should not be triggered until it receives the appropriate information/documents from the other municipalities. At a minimum, deadlines need to be established for the sharing of information for all municipal entities to be able to develop an LTCP by the deadline. As drafted, the Permit provision is overbroad and inappropriately purports to impose liability upon PVSC for the actions/inactions of others. Accordingly, this permit requirement must be revised.

- Part IV, Combined Sewer Management, § G.10

38. Small System Considerations

The CSO Permits inappropriately omit to address the small system requirements of the National CSO Policy as they are incorporated into New Jersey law.

Part I.D of the CSO Policy (incorporated into New Jersey law at N.J.A.C. § 7:14A-11.12.h) provides in relevant part:

"[J]urisdictions with populations under 75,000 may not need to complete each of the formal steps outlined in Section II.C. of this Policy [CSO LTCP Development], but should be required through their permits or other enforceable mechanisms to comply with

the nine minimum controls (II.B), public participation (II.C.2), and sensitive areas (II.C.3) portions of this Policy.”

On information and belief (and based upon 2010 United States Census Bureau figures), the communities of Bayonne, East Newark, Harrison, Kearny, and North Bergen have populations less than 75,000 and, accordingly, qualify for small system treatment under the CSO Policy and New Jersey law. The Permit must be modified to identify the proper small system requirements for these communities.

- Part IV, Combined Sewer Management, § G

II. STATEMENT OF CONSISTENCY WITH N.J.A.C. 7:14A-15.13

PVSC fully addressed its concerns about the issues and permit conditions discussed above in its extensive comments on the draft permit.¹⁰ Those comments as well as those of the other communities served by PVSC are incorporated herein by reference.

As noted in several comments above, there were a number of changes which the Department made without any notice to PVSC or opportunity to comment. An example would be the addition of a legally incorrect CSO reopener provision which neither PVSC nor the municipalities had any opportunity to comment on. We are compelled to object to several of these changes as well – which we believe warranted a republication of a revised draft permit under New Jersey permitting rules.

III. ESTIMATE OF TIME REQUIRED FOR HEARING

Due to the extensive scope of PVSC’s objections to the Permit, a reasonable estimate of the amount of time required for a hearing is five (5) days.

IV. INFORMATION SUPPORTING REQUEST

PVSC’s request is supported by the authorities and documents cited in Section I above, including:

- Comment of Bridget M. McKenna, Chief Operating Officer of PVSC (Apr. 7, 2014)
- Comments of Bayonne City MUA, Jersey City MUA, City of Newark, North Bergen Township MUA, East Newark Borough, Harrison Town, Kearny Town, and Paterson City
- NJDEP, Response to Comments (Mar. 12, 2015)
- USEPA, Combined Sewer Overflow Policy, 59 Fed. Reg. 18688 (Apr. 19, 1994)

¹⁰ Comment of Bridget M. McKenna, Chief Operating Officer of PVSC (Apr. 7, 2014).

- USEPA, Guidance for Nine Minimum Controls (USEPA832-B-95-003) (May 1995)
- USEPA, NPDES Permit Writer's Manual, USEPA Docket # 833-K-10-001 (Sept. 2010)

V. STATEMENT OF WILLINGNESS TO NEGOTIATE WITH NJDEP PRIOR TO PROCESSING OF HEARING REQUEST

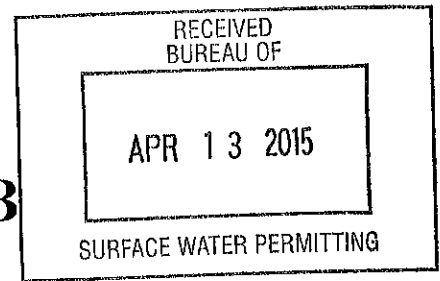
PVSC is willing to enter into and hereby requests discussions with NJDEP to resolve any or all of the objections set forth in Section I prior to the processing of this hearing request.

VI. STATEMENT OF REPRESENTATION

The party making this request, Bridget M. McKenna, does so in her capacity as Chief Operating Officer of PVSC. She represents PVSC and no other parties. PVSC's address is as follows:

Passaic Valley Sewerage Commissioners
600 Wilson Avenue
Newark, NJ 07105

ATTACHMENT B



STATEMENT IN SUPPORT OF PASSAIC VALLEY SEWERAGE COMMISSIONERS STAY REQUEST

Appendix B
Passaic Valley Sewerage Commissioners
Stay Request

In accordance with N.J.A.C. 7:14A-17.6(a), the Passaic Valley Sewerage Commissioners ("PVSC" or "Permittee") requested an adjudicatory hearing, in accordance with N.J.A.C. 7:14A-17.2(a) to contest specific permit conditions with regard to NJPDES Permit No. NJ0021016. (A copy of the PVSC adjudicatory hearing request is enclosed.) The adjudicatory hearing request contested the following permit conditions which are categorized below as follows: I. Effluent Limitations and Sampling Issues; II. CSO Requirements; and III. Reporting and Other Requirements. A number of the issues identified below and as set forth in the permit appeal pertain to more than one permit condition. The specific permit conditions are delineated in the appeal document.

I. Effluent Limitations and Sampling Issues

A. Numerical Effluent Limitations

1. Flow Limit is Arbitrary and Unnecessary (Appeal Issue 1.A.12)
2. Percent Removal Waiver Should be Incorporated Into Permit (Appeal Issue 1.A.15)

B. Other Effluent Limitations

1. Provisions Requiring Compliance with Water Quality Standards and Water Quality Planning Regulation (Appeal Issue 1.A.5)
2. Application of Interstate Environmental Commission (IEC) Requirements (Appeal Issue 1.A.6)
3. Color Discharge Requirement Should be Deleted (Appeal Issue 1.B.7)

C. Sampling/Monitoring

1. Inconsistency in Free Cyanide Effluent Limit Effective Date and Sample Type (Appeal Issue 1.A.16)
2. Inconsistent Sampling Methods (Appeal Issue 1.B.4)

II. CSO Requirements

1. Liability for Actions of Other Municipalities/Joint and Several Liability for Actions Outside of PVSC's Control (Appeal Issue 1.A.1)
2. Schedule of Compliance Not Workable (Appeal Issue 1.A.2)

3. Permit Requirements Are More Restrictive Than Applicable Standards (Appeal Issue 1.A.3)
4. Blending Must Not be Considered a Bypass (Appeal Issue 1.A.4)
5. Technology-Based Requirements Beyond the Nine Minimum Controls (Appeal Issue 1.A.7)
6. Requirements to Implement Nine Minimum Controls for Outfalls Not Owned or Operated by PVSC (Appeal Issue 1.A.8)
7. Long Term Control Planning ("LTCP") Requirements Applicable to Infrastructures Which PVSC Does Not Own or Operate (Appeal Issue 1.A.9)
8. Sensitive Area Analysis Not Applicable to PVSC (Appeal Issue 1.A.10)
9. Requirements Applying to the Collection System Owned or Operated by Other Permittees Should Not Apply to PVSC (Appeal Issue 1.A.11)
10. Inflow and Infiltration ("I/I") Identification and Reduction Requirement (Appeal Issue 1.A.13)
11. PVSC Cannot Unilaterally Modify or Revise Sewer Use Agreements (Appeal Issue 1.A.14)
12. Standard Operating Procedures ("SOP") Cannot "Ensure Specified Results" (Appeal Issue 1.B.13)
13. Operation and Maintenance (O&M) Frequency Need Not Be Set by Manufacturer's Recommendation (Appeal Issue 1.B.14)
14. Intrusion and Flooding Can be Minimized, But Not Eliminated (Appeal Issue 1.B.15)
15. In-Line Storage Requirements (Appeal Issue 1.B.16)
16. Characterization Information Requirement Too Broad (Appeal Issue 1.B.17)
17. Characterization of the Entire Collection System (Appeal Issue 1.B.18)
18. PVSC Cannot Unilaterally Revise Rules, Ordinances and/or Sewer Use Agreements for Satellite Systems (Appeal Issue 1.B.20)
19. SOP Requirements are Overly-Broad and In Excess of Legal Authority (Appeal Issue 1.B.21)

20. Removal of Obstructions Within One Week Is Impractical (Appeal Issue 1.B.22)
21. Immediate Steps to Take Corrective Action for All System Defects Is Unnecessary and Impracticable (Appeal Issue 1.B.23)
22. Asset Management Plan Submission Should be Deferred (Appeal Issue 1.B.25)
23. PVSC Cannot Enforce Rules and Regulations on All Illegal Connections/Discharges into publicly-owned treatment works ("POTW") in Other Permittees' Jurisdictions If It Lacks Authority to Do So (Appeal Issue 1.B.26)
24. System Characterization Requirement of Entire Collection System Is Too Broad (Appeal Issue 1.B.27)
25. CSO Monitoring for System Characterization Should be More Flexible (Appeal Issue 1.B.28)
26. Supplemental CSO Team Requirement is Inappropriate (Appeal Issue 1.B.29)
27. Treatment of Residual Flows Requirement Not Consistent with Regulation (Appeal Issue 1.B.30)
28. Development of Information Pertaining to the Presumption or Demonstration Approach Should Apply Only to the Appropriate Permittee (Appeal Issue 1.B.31)
29. Presumption Approach Need Only Meet One of the Alternatives, Not All (Appeal Issue 1.B.32)
30. Cost/Performance Considerations Should be Clarified (Appeal Issue 1.B.33)
31. Maximizing Treatment at the Existing STP is Inappropriate (Appeal Issue 1.B.34)
32. Implementation Schedule Includes Requirements that Are Inapplicable to PVSC (Appeal Issue 1.B.35)
33. Compliance Monitoring Program Should Not Apply to PVSC (Appeal Issue 1.B.36)
34. Permittee's LTCP Responsibilities Improperly Applied to PVSC (Appeal Issue 1.B.37)

III. Reporting and Other Permit Conditions Seeking Stay

A. Reporting/Recordkeeping

1. Notification of "Operational Alterations" (Appeal Issue 1.B.3)

2. Inconsistent Reporting Frequency (Appeal Issue 1.B.5)
3. Quarterly Progress Reports Are Excessive (Appeal Issue 1.B.9)
4. Requirements to Report Activities of Others Should be Deleted (Appeal Issue 1.B.10)
5. CSO Recordkeeping Should Not Apply to PVSC (Appeal Issue 1.B.11)
6. Sewer Map Submission Requirement Should Only Include Infrastructure Owned and Operated by PVSC (Appeal Issue 1.B.12)
7. GIS Map Requirement is Overbroad (Appeal Issue 1.B.19)
8. SIU Information Requirements is Unnecessarily Burdensome (Appeal Issue 1.B.2)

B. Other Permit Conditions

1. Pretreatment Requirements on PVSC to Prevent Illicit Discharges Inappropriately Imposed on PVSC (Appeal Issue 1.B.8)

For further information on these appeal issues see Attached Listing and Appeal document.

In accordance with N.J.A.C. 7:14A-17.6(b), PVSC states that it is an existing permitted discharger.

In accordance with N.J.A.C. 7:14A-17.6(c)(1), PVSC provides the following justification for each requested stay of permit limitations:

Information Supporting Request for Stay

PVSC hereby requests a stay of the above referenced permit conditions, set forth in New Jersey Pollution Elimination Discharge System ("NJPDDES") permit number NJ0021016 (the "Permit"). As required by N.J.A.C. 7:14A-17.6(c), this request should be granted for the following reasons, which apply to all of the above-identified disputed permit requirements:

1) **PVSC 's Ability to comply with the Permit using Existing Treatment Facilities**

PVSC has no means to ensure compliance on the challenged provisions with the existing facilities.

Effluent Limitations and Sampling Issues:

- There are substantial issues with the Permit's requirements regarding the percentage of pollutant removal and concentration limitations from the Permittee's effluent discharges. Namely, PVSC's influent presently holds low concentrations of the pollutants regulated by its Permit during wet weather periods and its treatment plant simply cannot achieve the

technology-based limitations imposed. The NJDEP response to comments, as well as permit condition Part IV, Sanitary Wastewater, § H.3, which is not yet effective, acknowledges that the PVSC facility cannot meet 85% removal limits and that PVSC qualifies for the waiver. In addition, as increased dilute flows are routed to the PVSC wastewater treatment plant ("WWTP"), it will progressively become even more difficult for PVSC to meet the percent removal requirements. Percent removal requirements provide no environmental benefit as necessary water quality protection for both biochemical oxygen demand ("BOD") and total suspended solids ("TSS") is provided by the concentration and mass limits in the permit for those parameters. Thus, staying the 85 percent removal requirement during the pendency of the appeal will not jeopardize water quality in any way. The 85 percent removal limit is completely unnecessary. In fact, in order to ensure compliance with the percent removal limits, PVSC may have to reduce the wet weather flows which it takes into the plant. This would be extremely counter-productive environmentally. For these reasons, the 85 percent removal requirements should be stayed.

- Flow is a limitation that PVSC is currently meeting but that PVSC may not be able to meet if permittees further maximize their flows to the PVSC WWTP as required by the Permit. Also, the flow limitation puts an unnecessary and arbitrary constraint on the region's LTCP planning by limiting the amount of flow that can be taken to the treatment plant.
- Compliance with vague and undefined effluent limits based upon water quality standards (Appeal Issue 1.A.5), EIC Requirements (Appeal Issue 1.A.6), color (Appeal Issue 1.B.7) are inappropriate as they deny PVSC fair notice of what it can discharge and due process (though the development of effluents limits through the permitting process, with a right to appeal). Also, such conditions deny PVSC a compliance schedule for any pollutants which it cannot comply with, if applicable. These conditions violate state and federal law regarding the proper derivation of effluent limitations and are inconsistent with federal and state permit shield laws. In light of the nature of these vague permit conditions it cannot be confirmed with certainty whether existing facilities can achieve compliance with these permit conditions.
- Compliance with the sampling/monitoring requirements (Appeals Issues 1.A.16 and 1.B.4) cannot be ascertained as the permit has mutually exclusive requirements.

CSO Provisions:

- The final Permit, as-written, establishes a number of requirements which are entirely dependent upon factors wholly outside of the control of the Permittee. For example, the New Jersey Department of Environmental Protection ("NJDEP") approval of submissions, enforcement of local ordinances related to infiltration/inflow reduction, ability to ensure no system overflows or backups occur, etc. Existing facilities cannot be used to ensure compliance with such permit conditions.

- Likewise, the Permit establishes compliance deadlines without any means for PVSC to ensure such deadlines will be met, *i.e.*, deadlines dependent on actions of other permittees and DEP input and approval (without any express timeframe during which such approval must be given).
- Moreover, several of the Permit's conditions are so vague as to be impossible for the Permittee to determine whether or not it has achieved compliance, substantial or otherwise *e.g.*, requirements to ensure all data among all the permittees are "consistent" and "ensure" certain results will occur due to the issuance of Standard Operating Procedures. No discharger can "ensure" what is required by the permit (such as that no SSOs will occur).
- PVSC also cannot use its existing facilities to implement requirements where the sewer system or other facility is owned and operated by another permittee. *See* Requirements to Implement Nine Minimum Controls for Outfalls Not Owned or Operated by PVSC (Appeal Issue 1.A.8); LTCP Requirements Applicable to Infrastructures Which PVSC Does Not Own or Operate (Appeal Issue 1.A.9); I/I Identification and Reduction Requirement (Appeal Issue 1.A.13);
- PVSC can undertake actions to respond when intrusion occurs, but it cannot prevent intrusion and certainly not all intrusion. (Appeal Issue 1.B.15); and Permittee's LTCP Responsibilities Improperly Applied to PVSC (Appeal Issue 1.B.37)

Reporting and Other Permit Conditions

- The "use of existing treatment facilities" is not applicable to PVSC's objections to these reporting and related requirements.
- 2) **Ability to Comply with Permit Conditions by Implementing Low-Cost, Short-Term Modifications to the Existing Treatment Facility**

There is no "low cost, short-term modification" available to ensure compliance with the disputed provisions. As we explain below, the contested provisions do not lend themselves to such opportunities.

Effluent Limitations and Sampling Issues:

- NJDEP has acknowledged in the response to comments that PVSC cannot meet the 85% removal requirement and qualifies for the waiver. There are no low-cost, short term modifications of the existing treatment facility that could achieve the 85% removal requirements. (Appeal Issue I.A.15)
- As noted above, the narrative Permit conditions for which PVSC is requesting a stay are vague and fail to apprise PVSC of its legal obligations. As it cannot be determined with certainty whether compliance is achieved with such vague standards, it similarly cannot be ascertained as to whether there are any low-cost, short-term modifications to the existing treatment facility that can be undertaken to achieve compliance, if applicable. *See* Compliance with Water Quality Standards ("WQS") (Appeal Issue 1.A.5), IEC Requirements (Appeal Issue 1.A.6) and color (Appeal Issue 1.B.7). What pollutant or

requirement do these permit provisions contemplate? Without any idea as to the issue or pollutant of concern and the numerical compliance level, PVSC is unable to determine to what, if any, modifications could be necessary or appropriate.

CSO Provisions:

- These permit conditions are not based upon the modification of existing treatment facilities except to the extent that I/I reduction (Appeal Issue I.A.13) by other permittees is deemed to be pollution abatement/prevention to meet the I/I requirement. Such actions, however, would clearly not be a "low cost short-term modification." Furthermore, I/I requirements would apply to other permittees, not PVSC.

Reporting and Other Permit Conditions:

- The use or modification of existing treatment facilities is not applicable to PVSC's objections to these reporting and related requirements.

3) **Level of Pollutant Control Actually Achieved using Short Term Modifications**

As noted above, there are no short-term modifications available to ensure compliance with the disputed provisions

Effluent Limitations and Sampling Issues:

- No short-term modifications are possible in the context of the Permit that would allow compliance with percent removal under wet weather conditions.
- As PVSC believes it is meeting applicable standards, no short term modifications can be identified. Furthermore, due to the vagueness of the permit conditions no short modifications can be identified. See Compliance with WQS (Appeal Issue I.A.5), IEC Requirements (Appeal Issue I.A.6) and color (Appeal Issue I.B.7).

CSO Provisions:

- As discussed above, there are no pollutant control short-term modifications.

Reporting and Other Permit Conditions:

- These permit conditions are not based upon a level of pollutant control. Any modifications to meet these permit limits, if possible, will not affect the level of pollutant control.

4) **Costs of Compliance**

Effluent Limitations and Sampling Issues:

- PVSC roughly estimates that the cost to ensure compliance with applicable CBOD and TSS percent removal limitations would be in the millions of dollars. Percent removal

requirements, as noted, are significantly more stringent and/or inconsistent with the requirements imposed by applicable federal regulations implemented by NJDEP. In order to comply with these provisions, PVSC will almost certainly be required to expend millions of dollars to modify its facility.

- As PVSC believes it is meeting applicable standards, it is unknown what costs, if any, would be involved to meet the vague water quality permit requirements. See Compliance with WQS (Appeal Issue 1.A.5), IEC Requirements (Appeal Issue 1.A.6) and color (Appeal Issue 1.B.7). It could be tens or even hundreds of millions of dollars if any of these provisions are found to be inconsistent or more stringent than the CSO Policy approach or control requirements.
- While the costs to meet flow limits are unknown at this time, it can reasonably be expected to be very significant in the future. Once CSOs are eliminated, and flows are maximized to the treatment plant, significant expenses would likely be encountered (by the other permittees) to store flows or separate sewers in order to assure the 330 mg limit will be being met.

CSO Provisions:

- As discussed above, there are no pollutant control short-term modifications.

Reporting and Other Permit Conditions:

- As discussed above, there are no pollutant short-term modifications. There will, however, be costs associated with providing notifications of mere operational changes (Appeal Issue 1.B.3), to meet inconsistent requirements (Appeal Issue 1.B.5), other reporting requirements (Appeal Issues 1.B.9, 1.B.10, 1.B.12, 1.B.19 and 1.B.24), and to meet recordkeeping requirement (Appeal Issue 1.B.11). PVSC contends that such costs will be significant and, unfortunately, would divert resources from the task of LTCP development with no countervailing benefit.

5) Environmental Impacts of Granting a Stay on the Receiving Waterbody

Granting the requested stay will not cause adverse environmental impacts to occur.

Effluent Limitations and Sampling Issues:

- Staying the flow limits will have no environmental impact given that concentration and mass limits fully protect water quality and such a stay may allow PVSC to treat more wet weather flow that would otherwise receive no treatment. PVSC will continue to operate under its existing permit conditions unless and until these stayed conditions are revised. N.J.A.C. 7:14A-17.6(f). These conditions also appear to be based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j).
- Staying the vague water quality permit conditions (Compliance with WQS (Appeal Issue 1.A.5), IEC Requirements (Appeal Issue 1.A.6) and color (Appeal Issue 1.B.7) will have

no environmental impact given that PVSC will continue to operate under its existing permit conditions unless and until these stayed conditions are revised. N.J.A.C. 7:14A-17.6(f). The lack of environmental harm is indicated by the fact that these permit conditions were not imposed based upon any determination that there is a reasonable potential for PVSC to violate any of the underlying water quality standards not already limited in the permit. PVSC would not be doing anything to comply with these vague requirements so staying them won't have any adverse environmental effect.

- Under PVSC's requested stay, its current facility, which has been in compliance with its prior NJPDES permit and does not cause water quality standard exceedances in the receiving water, would remain in operation. Therefore, granting a stay would impose no additional impacts on the receiving water. PVSC is not a new permittee, where a stay would mean potentially unregulated discharges. Instead, it has a well-maintained facility in good working order. Staying the vague provisions does not impact the environment; it simply limits PVSC's exposure to inappropriate non-compliance (PVSC should always be given a compliance schedule before being found in non-compliance with a limit it cannot meet) and enforcement with effluent conditions which have not been properly developed.
- Staying the percent removal requirements (Appeal Issue 1.A.15) will have no environmental impact given that PVSC will continue to operate under its existing permit conditions unless and until these stayed conditions are revised. N.J.A.C. 7:14A-17.6(f). Also, the record demonstrates that PVSC cannot comply with these requirements, thus making a stay particularly warranted in conjunction with the fact that the percent removal requirement has no relation to environmental protection (the concentration and mass BOD/TSS limits provide full water quality protection).
- Staying the inconsistency in the cyanide effluent limit effective date and sample type (Appeal Issue 1.A.16) will have no environmental impact because requisite monitoring will occur in any event and the contested provision appears to be a clerical error.
- Staying the grab sample permit conditions (Appeal Issue 1.B.4) is necessary for PVSC to collect the correct type of sample. Because the two permit requirements are inconsistent (one specifies "grab" while the other "composite") one or the other requirement must be stayed to allow PVSC to comply with the permit. PVSC believes that the grab sample requirement should be stayed and that will allow PVSC to collect composite samples from the outset of the permit. The stay of the grab sampling condition will have no environmental impact because requisite monitoring will occur in any event and the contested provisions appear to be clerical error.

CSO Provisions:

- Staying permit conditions imposing liability upon PVSC for actions of others and actions outside of PVSC's control (Appeal Issue 1.A.1), for an unworkable schedule of compliance (Appeal Issue 1.A.2), and for permit requirements that are more restrictive than applicable standards (Appeal Issue 1.A.3), will have no environmental impact. To the contrary, clearly delineating responsibilities among permittees, revising the compliance

schedule and correcting the erroneous provisions will only facilitate the development of a timely and appropriate LTCP.

- Staying the prohibition on blending (Appeal Issue 1.A.4) will have no environmental impact. In fact, the correction to allow blending is reasonably expected to allow PVSC to provide treatment to wet weather flows which would otherwise receive no treatment.
- Staying requirements to implement nine minimum controls for outfalls not owned or operated by PVSC (Appeal Issue 1.A.8), LTCP requirements applicable to infrastructures which PVSC does not own or operate (Appeal Issue 1.A.9), sensitive areas analysis not applicable to PVSC (Appeal Issue 1.A.10), requirements applying to the collection system owned or operated by other permittees (Appeal Issue 1.A.11), and I/I identification and reduction (Appeal Issue 1.A.13) will have no environmental impact given that PVSC has no authority over the covered CSO outfalls and infrastructure it does not own or operate, which are the sole responsibility of the other permittees. In addition, these conditions also appear to be based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j).
- Staying the permit requirements pertaining to PVSC unilaterally modifying or revising sewer use agreements, rules and ordinances (Appeal Issues 1.A.14 and 1.B.20), the development of SOPs (Appeal Issue 1.B.21), Enforcement in Other Permittee's Jurisdiction (Appeal Issue 1.B.26), system characterization for the entire collection system (Appeal Issue 1.B.27), and development of information pertaining to the presumption or demonstration approach (Appeal Issue 1.B.31), compliance monitoring (Appeal Issue 1.B.36), permittee's LTCP responsibility applied to PVSC (Appeal Issue 1.B.37), and implementation schedule includes requirements that are inapplicable to PVSC (Appeal Issue 1.B.35) and will have no environmental impact given that they seek to require actions that are not within PVSC's authority in any event. These conditions also appear to be based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j). The appropriate clarification of respective responsibilities among the permittees will only benefit the development of the LTCP.
- Staying the requirements for SOPs to "ensure" specified results (Appeal Issue 1.B.13) and the requirements to prevent intrusion and flooding (Appeal Issue 1.B.15) will have no adverse environmental impact as these permit conditions set forth impossible standards to achieve and also appear to be based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j).
- Staying the imposition of technology-based requirements beyond the nine minimum controls (Appeal Issue 1.A.7), operation and maintenance requirements set by manufacturer's recommendation (Appeal Issue 1.B.14), in-line storage requirements (Appeal Issue 1.B.16), removal of obstructions (Appeal Issue 1.B.22), and immediate steps to take corrective action for all system defects (Appeal Issue 1.B.23) will have no environmental impact given that PVSC will continue to operate under its existing permit conditions unless and until these stayed conditions are revised. N.J.A.C. 7:14A-17.6(f).

- Staying permit conditions pertaining to characterization information (Appeal Issue 1.B.17), characterization of the entire collection system (Appeal Issue 1.B.18), and asset management plan submission (Appeal Issue 1.B.25) will have no environmental impact. To the contrary, this condition will divert resources from the task of LTCP development with no countervailing benefit.
- Staying permit conditions pertaining to CSO monitoring for system characterization (Appeal Issue 1.B.28), supplemental CSO Team Requirement (Appeal Issue 1.B.29) and cost/performance considerations (Appeal Issue 1.B.33) will have no environmental impact. To the contrary, increased flexibility will only benefit the development of the LTCP.
- Staying permit conditions pertaining to treatment of residual flows (Appeal Issue 1.B.30), presumption approach need only meet one of the alternatives (Appeal Issue 1.B.32) and maximizing treatment at the existing STP (Appeal Issue 1.B.34) will have no environmental impact and are based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j).

Reporting and Other Permit Conditions:

- Staying the notification of “operational alterations” (Appeal Issue 1.B.3) will have no environmental impact given that PVSC will continue to provide appropriate notices of significant changes to NJDEP under a separate requirement in the permit. N.J.A.C. 7:14A-17.6(f). Further, this condition also appears to be based on an erroneous interpretation of law. N.J.A.C. 7:14A-17.6(j).
- Staying the inconsistent reporting frequency (Appeal Issue 1.B.5) condition will have no environmental impact because this appears to be a simple clerical error. Furthermore, the information will be reported, it is just a question of when.
- Staying the requirement to submit quarterly progress reports (Appeal Issue 1.B.9) in lieu of a semi-annual report will have no environmental impact given that PVSC will continue to operate under its existing permit conditions unless and until these stayed conditions are revised. N.J.A.C. 7:14A-17.6(f). Furthermore, an interim semi-annual reporting requirement can be imposed. N.J.A.C. 7:14A-17.6(g).
- Staying requirements to report activities of others (Appeal Issue 1.B.10) will have no environmental impact given that they seek to require actions that are not within PVSC’s authority and which are the responsibility of the respective localities.
- Staying CSO recordkeeping requirements (Appeal Issue 1.B.11) will have no environmental impact given the localities will (properly) record this information during the PVSC permit appeal process.
- Staying sewer map submission requirements (Appeal Issue 1.B.12) pending NJDEP clarification of the scope of PVSC’s mapping obligation will have no environmental impact.

- Staying the GIS map requirement (Appeal Issue 1.B.19) and SIU Information requirement (Appeal Issue 1.B.24) will have no environmental impact. To the contrary, these conditions will divert resources from the task of LTCP development with no countervailing benefit.
- Staying the requirement on PVSC to prevent illicit discharges (Appeal Issue 1.B.8) will have no environmental impact as it will allow for the correction of a permit provision which is inconsistent with applicable regulations.

List of Provisions Affected by the Stay Request

The permit provisions for which a stay is being sought are:

- All permit provisions that were submitted for appeal as identified in Attachment A to the Adjudicatory Hearing Request Checklist and Tracking Form for Individual NJPDES Permits, except the following:
 - A. TMDL Must be Completed Prior to Mandating Compliance with Water Quality Standards (Appeal Issue 1.A.17);
 - B. Permit Renewal Application Should Be Extendable (Appeal Issue 1.B.1);
 - C. New Reopener Added (Appeal Issue 1.B.2); and
 - D. PCB Requirement Should Not be Included in the Permit (Appeal Issue 1.B.6).